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ATTORNEYS FOR PLAINTIFFS AND THE PROPOSED CLASS AND SUBCLASSES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VICTOR P. GIOTTA and LORALEE
 GIOTTA, On Behalf Of Themselves And
 All Others Similarly Situated,

Plaintiffs,

vs.

OCWEN FINANCIAL
 CORPORATION, OCWEN LOAN
 SERVICING, LLC, ALTISOURCE
 SOLUTIONS, INC.; WILLIAM C.
 ERBEY; and DOES 1-50.

Defendants.

Case No.: 5-15-cv-00620-BLF

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

- (1) Violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1962(c) and (d));
- (2) Violations of the Fair Debt Collection Practices Act (15 U.S.C. §§ 1601, *et seq.*);
- (3) Violations Of The Rosenthal Fair Debt Collection Practices Act (California Civil Code §§ 1788, *et seq.*);
- (4) Violation of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and
- (5) Fraud.

DEMAND FOR JURY TRIAL

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Plaintiffs Victor P. Giotta and Lorelee Giotta (collectively “Plaintiffs” or the “Giottas”) by their attorneys, bring this class action on their own behalf and on behalf of all others similarly situated against: Defendants Ocwen Financial Corporation (“Ocwen Financial”) and Ocwen Loan Servicing, LLC (“Ocwen Servicing”) (collectively the “Ocwen Entities”); Defendant Altisource Solutions, Inc. (which, collectively with its parent Altisource Portfolio Solutions, S.A. (the “Altisource Parent”)¹ constitutes the “Altisource Entities”); and Defendant William C. Erbey and other unknown DOEs defendants (collectively all defendants are referred to as “Defendants”). Plaintiffs allege as follows based on the investigation of their counsel:

I. INTRODUCTION

1. This case is about the abusive, predatory and illegal home mortgage loan servicing business Defendant Erbey orchestrated by means of an illegal scheme involving the Ocwen and Altisource Entities. Until recently, Erbey controlled each of the Ocwen and Altisource Entities either directly or functionally: Erbey was the CEO of Ocwen Financial, the Executive Chairman of Ocwen Servicing and the Chairman of the Board of Directors of the Altisource Parent and three Altisource subsidiaries. Erbey’s control over these entities has been called a “complex mortgage servicing empire.”² Effective January 16, 2015, , Erbey was forced by the New York Department of Financial Services to resign from these positions as part of a consent order entered following the Department’s investigation of the very same practices giving rise to the allegations in Plaintiffs’ Complaint. Despite this, Erbey continues to exercise some control over these entities because he was and still remains largest individual shareholder of both the Altisource Parent and Altisource Servicing (which was a subsidiary of Ocwen Financial until, in 2009, it was spun off into an “independent” company under

¹ Plaintiffs named the Altisource Parent as a defendant in their original Complaint (Dkt. No. 1) but subsequently dismissed the Altisource Parent’s without prejudice after entering into a tolling agreement with the company. Dkt. No. 25. Although Plaintiffs’ First Amended Complaint does not name the Altisource Parent as a defendant, the Altisource Parent is a key entity in the Ocwen Enterprise described herein.

² *Altisource Portfolio – Fall of Erbey’s Empire*, Seeking Alpha, March 23, 2015, available at <http://seekingalpha.com/article/3020316-altisource-portfolio-fall-of-erbeys-empire> (last visited April 1, 2015).

1 Erbey's direction), and has and still owns 16.9% (over 5 million shares) of stock in Ocwen Financial.
 2 Moreover, the Ocwen and Altisource Entities continue to operate the scheme Erbey set in motion
 3 which continues to harm borrowers as described herein. This illegal scheme is the "Ocwen
 4 Enterprise."³

5 2. Ocwen Financial and Ocwen Servicing entered into a consent order with the New York
 6 State Department of Financial Services, in which the companies stipulated that they overcharged
 7 borrowers for Distressed Mortgage Services, and did so through its association with Altisource.
 8 Simply put, the Ocwen Enterprise was premised on undisclosed self-dealing. It worked like this:
 9 Ocwen Financial caused its subsidiary Ocwen Servicing to acquire the servicing rights to subprime
 10 mortgages that were likely to become "distressed" (meaning the borrower falls behind on his or her
 11 payments and enters default).⁴ When Ocwen Servicing acquired the servicing rights to a mortgage, it
 12 also acquired the right to collect from the borrower fees for certain services in the event the mortgage
 13 became distressed. These services are the Distressed Mortgage Services⁵ and the fees Ocwen
 14 Servicing charged borrowers for them are the Distressed Mortgage Fees. Ocwen Servicing keeps the
 15 Distressed Mortgage Fees and reaps increased revenue and profits therefrom.

16 3. Under Erbey's direction, Ocwen also split off Altisource into its own "independent"
 17 company, effectively allowing Erbey and other joint managers, directors and shareholders to double-
 18 dip salaries, benefits and profits by receiving money from the operations of Ocwen and the newly-
 19 separated Altisource. To increase their own salaries, benefits, revenue and profits derived from the
 20

21 ³ The Ocwen Enterprise is more specifically described in the First Cause of Action below.

22 ⁴ For instance, Ocwen Financial guaranteed Ocwen Servicing's performance and financed the
 23 transaction when Ocwen Financial acquired servicing rights from the lender on at least one occasion.
 24 See June 13, 2013 Ocwen Financial Corp SEC Form 8-K at p.3, item 1.01, attached hereto as Exhibit
 25 1. See also *id.* at Exhibit 10.1 ("Guarantee") (Ocwen Financial makes the guarantee to induce the
 bank to sell the servicing rights to Ocwen Servicing's subsidiary).

26 ⁵ As detailed herein, the Distressed Mortgage Services include: property inspections, property
 27 appraisals, broker price opinions ("BPOs"), property valuation expenses, foreclosure auctions, and
 28 title examinations. Plaintiffs may learn of other Distressed Mortgage Services for which Ocwen
 Servicing charged borrowers fees as part of the Ocwen Enterprise, and reserve their right to amend
 their complaint to include additional fees for Distressed Mortgage Services so discovered.

1 Distressed Mortgage Fees, Ocwen Servicing then hired Altisource and its subsidiaries (which Erbey
2 also controls) to provide the Distressed Mortgage Services for Ocwen, which it previously did for
3 itself in-house, at artificially and unfairly high prices for the Distressed Mortgage Services, and to
4 charge for Distressed Mortgage Services that were duplicative of other services. Through this scheme,
5 which was concealed from borrowers, the self-dealing Ocwen Enterprise reaped increased salary,
6 benefits, revenue and profits they did not earn at the borrowers' expense. Moreover, given that
7 Altisource was not a mortgage servicer, it could operate outside of the purview of bank regulators such
8 as the Consumer Financial Protection Bureau that was created to rein-in mortgage servicing abuses.

9 4. The Ocwen Enterprise's self-dealing scheme to charge borrowers for marked-up and
10 duplicative Distressed Mortgage Services was never disclosed to borrowers or otherwise made public
11 until being revealed by the New York State Department of Financial Services beginning, in part, in a
12 February 26, 2014 letter released by the Department.

13 5. Plaintiffs bring this action seeking injunctive relief and damages on behalf of
14 themselves and thousands of homeowners in California and throughout the United States who have
15 been and continue to be victims of Defendants' unfair and unlawful schemes.

16 **II. PARTIES**

17 6. Plaintiffs Victor P. Giotta and Lorelee Giotta are married and citizens of the State of
18 California, residing in San Jose, Santa Clara County, California. The Giottas have an outstanding
19 mortgage loan, serviced by Ocwen Servicing, on their San Jose house in which they have resided for
20 over 50 years. The Giottas' mortgage loan was in default at the time Ocwen Servicing acquired the
21 right to service their mortgage loan in or about February 2013.

22 7. Defendant William C. Erbey controlled the Ocwen Enterprise through either direct or
23 effective control of its participants including the Ocwen and Altisource Entities. Mr. Erbey is the
24 former CEO of Ocwen Financial, the Executive Chairman of Ocwen Servicing and former Director
25 and Chairman of the Board of four related Altisource companies, including Altisource Portfolio
26 Solutions S.A., Altisource Residential Corporation, Altisource Asset Management Corporation, and
27 Home Loan Servicing Solutions, Ltd. Mr. Erbey is the single largest shareholder of Ocwen Financial
28 and the Altisource Parent. On January 16, 2015 he stepped down from his positions as Executive

Chairman of Ocwen and Director and Chairman of the Board of Altisource as part of a consent order with the New York Department of Financial Services due to his involvement in a multitude of loan servicing violations, including those described herein. Through his control of the Ocwen and Altisource Entities, Mr. Erbey orchestrated the Ocwen Enterprise. Mr. Erbey's control over these entities has been called a "complex mortgage servicing empire."⁶ As of December 31, 2014, Erbey owned or controlled approximately 29% of the common stock of the Altisource Parent, and currently owns approximately 16.9% of the common stock of Ocwen Financial.⁷

8. Defendant Ocwen Financial Corporation ("Ocwen Financial") is a publicly traded corporation organized under the laws of Florida, with its principal place of business in Atlanta, Georgia. Ocwen Financial regularly conducts business in California, and regularly conducts business within this District. Ocwen Financial's main role in the Ocwen Enterprise is to help secure mortgage servicing rights for its subsidiary, Ocwen Servicing. Ocwen Financial's close affiliation with the other members of the Ocwen Enterprise is reinforced by the following:

- a. Ocwen Financial admits its business is "dependent on many of the services and products provided by Altisource."⁸ These services include "various business process outsourcing services" (which includes the Distressed Mortgage Services) and technology products and support services (which includes the mortgage servicing software Ocwen Servicing developed then sold to the Altisource Parent). *Id.*
- b. Ocwen Financial and the Altisource Parent also share administrative and corporate services as well as sharing access to borrower data. *Id.*

⁶ *Altisource Portfolio – Fall of Erbey's Empire*, Seeking Alpha, March 23, 2015, available at <http://seekingalpha.com/article/3020316-altisource-portfolio-fall-of-erbeys-empire> (last visited April 1, 2015).

⁷ Altisource Parent March 2, 2015 SEC Form 10-k, p. 16, available at <http://www.sec.gov/Archives/edgar/data/1462418/000162828015001367/asps-12312014x10k.htm>.

⁸ Ocwen Financial September 30, 2014 SEC Form 10-Q, p. 44-45, available at <http://www.sec.gov/Archives/edgar/data/873860/000087386014000020/a2014093010q.htm> (last visited April 3, 2015).

- 1 c. Although Ocwen Financial pays the Altisource Parent for the Distressed Mortgage
2 Fees, Ocwen Financial does not report the Distressed Mortgage Fees as expenses
3 because “[s]ervices provided by Altisource under the Services Agreements with Ocwen
4 are generally charged to the borrower and/or loan investor.” *Id.*
- 5 d. In 2013, Ocwen Financial purchased two competing home loan servicing entities,
6 Homeward and ResCap, then promptly sold these entities’ fee-based businesses to
7 Altisource. *Id.* at 42. Ocwen Financial financed these transactions in part using a \$75
8 million loan from the Altisource Parent. *Id.* at 55.
- 9 e. Ocwen Financial has automatically-renewing agreements with the Altisource Parent
10 pursuant to which the Ocwen and Altisource Entities share services including human
11 resources, vendor management, corporate services, six sigma, quality assurance,
12 quantitative analytics, treasury, accounting, tax matters, risk management, strategic
13 planning and compliance. *Id.* at F-59-60.
- 14 f. Defendant Erbey was Ocwen Financial’s Executive Chairman in addition to serving as
15 the Chairman of Altisource, and many of Ocwen Financial’s officers and directors own
16 interests in the Altisource Parent and/or Altisource Servicing.⁹
- 17 g. Its former Chairman, William Erbey, owns or controls more than 13% of Ocwen
18 Financial’s common stock and 26% of Altisource Portfolio Solutions S.A.’s common
19 stock.
- 20 h. In 2012, Ocwen purchased Erbey’s home for \$6.5 million. *Id.* at F-59.
- 21 i. Until recently, Ocwen Financial’s Chief Risk Officer concurrently served as the
22 Altisource Parent’s Chief Risk Officer, while reporting directly to Erbey in both
23 capacities. Consent Order ¶ 23. NYDFS observed “This individual seemed not to
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25

26 ⁹ Ocwen Financial 2013 SEC Form 10-k, p. 18, available at
27 <http://www.sec.gov/Archives/edgar/data/873860/000144530514000799/a2013123110k.htm> (last
28 visited April 3, 2015).

1 appreciate the potential conflicts of interest posed by this dual role, which was of
2 particular concern given his role as Chief Risk Officer.” *Id.*

3 j. According to the Altisource Parent’s most recent SEC Annual Report, “Ocwen is our
4 largest customer and the loss of Ocwen as a customer or a reduction in the size of
5 Ocwen could adversely affect our business and results of operations.”¹⁰ “The Service
6 Agreements also prohibit Ocwen from establishing fee-based businesses that would
7 directly or indirectly compete with Altisource’s services with respect to the Homeward
8 Residential, Inc. and Residential Capital, LLC portfolios.” April 23, 2015 SEC form
9 10-Q at 9.

10 k. Unsurprisingly given its origin, the Altisource Parent provides mortgage services
11 “primarily for loan portfolios serviced by Ocwen.”¹¹

12 l. In 2014, 60% of the Altisource Parent’s total revenue was derived from Ocwen
13 Financial and its subsidiaries.¹² No other client accounts for more than 10% of
14 Altisource’s revenue.

15 m. As one investor report described, “[o]ne key aspect of the spinoff is that Ocwen has to
16 use Altisource’s services. This means that whenever Ocwen sells shares or raises debt
17 to buy mortgage servicing portfolios, it brings business to Altisource. Altisource does
18 not have to spend money on attracting this new business. And of course it grows when
19 Ocwen grows.”¹³

21 ¹⁰ March 2, 2015 SEC Form 10-k, p. 9, available at
22 <http://www.sec.gov/Archives/edgar/data/1462418/000162828015001367/asps-12312014x10k.htm>.

23 ¹¹ March 2, 2015 SEC Form 10-k, available at
24 <http://www.sec.gov/Archives/edgar/data/1462418/000162828015001367/asps-12312014x10k.htm>.

25 ¹² March 2, 2015 SEC Form 10-k, p. 6, available at
26 <http://www.sec.gov/Archives/edgar/data/1462418/000162828015001367/asps-12312014x10k.htm>.

27 ¹³ *Investment Thesis on Altisource Portfolio Solutions (ASPS)*, MarketFolly, July 8, 2013, available at
28 <http://www.marketfolly.com/2013/07/altisource-portfolio-solutions-asps.html> (last visited April 1, 2015).

n. Since the Ocwen Enterprise has come under fire from regulators and consumer lawsuits, investors are seriously questioning the Altisource Parent's continued performance since it depends directly on the Ocwen Enterprise and is therefore directly threatened by the exposure of the Ocwen Enterprise's wrongdoing.¹⁴ Reportedly, the Altisource Parent's "whole business model" "is now threatened" by the exposure of the Ocwen Enterprise's conduct. *Id.* "[A]s the bulk of Altisource's revenue is created in connection with [Ocwen Financial], a failure of [Ocwen Financial] to restore its operations in time would definitely endanger the whole core business of [the Altisource Parent]." *Id.*

o. The Altisource Parent's March 2, 2015 SEC filing reported a decline in earnings growth as a result of expenses incurred "for people and infrastructure to support a larger Ocwen[.]"¹⁵

9. Defendant Ocwen Loan Servicing, LLC ("Ocwen Servicing") is a limited liability company organized under the laws of Delaware, and an indirect wholly-owned subsidiary of Ocwen Financial.¹⁶ Ocwen Servicing maintains operations in this District related to the activities at issue in this case, including operations involving the servicing of mortgage loans at issue in this action. Ocwen Servicing is headquartered in West Palm Beach, Florida, and is currently licensed to service mortgage loans in all fifty states, including California, the District of Columbia, and two U.S. territories. Ocwen Servicing's main role in the Ocwen Enterprise, is to contract with the Altisource Entities for Distressed

¹⁴ *Altisource Portfolio – Fall of Erbey's Empire*, Seeking Alpha, March 23, 2015, available at <http://seekingalpha.com/article/3020316-altisource-portfolio-fall-of-erbey-s-empire> (last visited April 1, 2015).

¹⁵ See exhibit to March 2, 2015 SEC Form 8-k, available at http://www.sec.gov/Archives/edgar/data/1462418/000110465915015799/a15-5701_1ex99d1.htm (last visited April 1, 2015).

¹⁶ Ocwen Financial September 30, 2014 SEC Form 10-Q, p. 8, available at <http://www.sec.gov/Archives/edgar/data/873860/000087386014000020/a2014093010q.htm> (last visited April 3, 2015).

1 Mortgage Services at artificially high prices and charge borrowers for these inflated services as well
 2 as for Distressed Mortgage Services that are duplicative of other services. On January 23, 2015, the
 3 California Department of Business Oversight (“DBO”) announced a \$2.5 million settlement with
 4 Ocwen Servicing for failing to provide the DBO with reports on its compliance with California
 5 mortgage lending laws.¹⁷ The settlement provides Ocwen Servicing will pay \$2.5 million in penalties
 6 to the DBO, pay for an independent audit of its mortgage servicing practices and take on no new
 7 California customers pending the DBO’s approval, in exchange for the DBO’s agreement to drop its
 8 efforts to suspend Ocwen Servicing’s license to operate in California. *Id.*

9 10. Altisource Portfolio Solutions S.A. (the “Altisource Parent”) is not a named defendant
 10 in this lawsuit, but is an integral element of the Ocwen Enterprise. The Altisource Parent is a publicly
 11 traded company incorporated in Luxembourg, with a principal place of business in Atlanta, Georgia.
 12 The Altisource Parent consists of Ocwen Financial’s former “Ocwen Solutions” line of business that
 13 Ocwen Financial spun off in 2009.¹⁸ Ocwen Financial admits the Altisource Parent is really nothing
 14 more than “[Ocwen Financial’s] former unsecured collections business, residential fee-based loan
 15 processing business and technology platforms” that continues to provide these services to Ocwen
 16 Financial in furtherance of the Ocwen Enterprise. *Id.* The Altisource Parent’s main role in the Ocwen
 17 Enterprise is to lease back to Ocwen Financial the mortgage servicing software Ocwen Servicing
 18 developed then sold to the Altisource Parent. Ocwen Financial’s 2013 Annual Report makes clear
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23
 24 ¹⁷ *Ocwen Agrees to \$2.5 Million Settlement for Failing to Provide Loan Information*, California
 25 Department of Business Oversight, January 23, 2015, available at
 26 http://www.dbo.ca.gov/Press/press_releases/2015/Ocwen%20Settlement%20Announcement%2001-23-15.pdf (last visited April 1, 2015).

27 ¹⁸ Ocwen Financial 2013 SEC Form 10-k, p. 9, available at
 28 <http://www.sec.gov/Archives/edgar/data/873860/000144530514000799/a2013123110k.htm> (last visited April 3, 2015).

Ocwen Financial depends completely on this technology it used to own that it now leases back from the Altisource Parent.¹⁹

11. Defendant Altisource Solutions, Inc. (“Altisource Servicing”) is a subsidiary of Altisource Portfolio Solutions S.A. and is a closely affiliated company with the Ocwen Entities. Altisource Solutions, Inc. was incorporated in Delaware in 2009 after being spun off of Ocwen Servicing, and has its principal place of business in West Palm Beach, Florida. Altisource Solutions, Inc. is registered to conduct business in California, maintains offices and regularly conducts business in California and within this District. Altisource Servicing’s main role in the Ocwen Enterprise, as described in detail herein, is to provide the inflated and/or duplicative Distressed Mortgage Services to Ocwen Servicing so that Ocwen Servicing may pass these inflated prices along to the borrower and the Ocwen Enterprise may generate higher revenue and profit therefrom.

12. Defendants DOES 1-10 are individuals or entities who participated in the conduct alleged in this First Amended Complaint but whose identities are as yet unknown to Plaintiffs. The DOE Defendants may include the officers or directors of the Ocwen and/or Altisource Entities, who may be obligated to indemnify the Ocwen and/or Altisource Entities for liability stemming from the allegations of this First Amended Complaint.²⁰ Plaintiffs reserve the right to amend this First Amended Complaint to identify these individuals or entities once their identities are ascertained.

III. JURISDICTION AND VENUE

13. Jurisdiction is proper under 28 U.S.C. §§ 1331 for Plaintiffs’ claims under RICO and the FDCPA, and under 28 U.S.C. § 1367 the Court may exercise supplemental jurisdiction over the state law claims because all of the claims are derived from a common nucleus of operative facts and

¹⁹ Ocwen Financial 2013 SEC Form 10-k, p. 18, available at <http://www.sec.gov/Archives/edgar/data/873860/000144530514000799/a2013123110k.htm> (last visited April 3, 2014).

²⁰ For example, on March 21, 2015, Ocwen Financial began entering into undertakings with directors and executive officers whereby the director or executive officer agreed to repay any amounts paid, advanced or reimbursed by Ocwen Financial in connection with a claim for which the director or executive officer as adjudged to be liable. *See* Ocwen Financial March 26, 2015 SEC Form 8-k exhibit 10.2.

1 are such that Plaintiffs ordinarily would expect to try them in one judicial proceeding. Jurisdiction of
2 this Court is also proper under 28 U.S.C. § 1332(d)(2). The matter in controversy exceeds the sum or
3 value of \$5,000,000, exclusive of interest and costs, and is a class action in which members of the
4 class of plaintiffs are citizens of states different from Defendants.

5 14. Venue is proper within this judicial district pursuant to 28 U.S.C. §1391(b) and (c).
6 Defendants transact business and are found within this District, and a substantial portion of the
7 underlying transactions and events complained of by the enterprise occurred in this district, and
8 affected persons, including Plaintiffs, who reside or resided in this judicial district at the material time.
9 Defendants have received substantial compensation from such transactions and business activity in
10 this District, including as the result of servicing mortgage loans for persons residing in this District.
11 Finally, Defendants reside and/or may be found in this District and the interstate trade and commerce
12 described herein is and has been carried out in part within this judicial District.

13 15. The Court has general personal jurisdiction over the Ocwen and Altisource Entities
14 because they have continuous and systemic business contacts within California by virtue of the
15 conduct described throughout this First Amended Complaint. Alternatively, if the Ocwen and
16 Altisource Entities' conduct described throughout this First Amended Complaint does not rise to the
17 level of "continuous and systemic" activity within California, the Court has specific personal
18 jurisdiction over Ocwen and the Altisource Entities because Ocwen's and the Altisource Entities'
19 conduct described throughout this First Amended Complaint and out of which Plaintiffs' claims arise
20 was purposefully directed at California residents, invoked the benefits and protections of California
21 law, and causes jurisdiction over the Ocwen and Altisource Entities to be Reasonable.

22 16. The Court also has specific personal jurisdiction over Defendant Erbey by virtue of his
23 role as the mastermind of the Ocwen Enterprise. Erbey created, oversaw and implemented the Ocwen
24 Enterprise's unlawful practices that were directed at and harmed California residents under the
25 protection of California's laws and to the benefit of Erbey and the Ocwen Enterprise's other
26 participants. Erbey personally and directly controlled, directed, authorized, encouraged and
27 participated in, and received a direct financial interest and benefit from, the Ocwen Enterprise as
28 described throughout this First Amended Complaint, including:

- a. Erbey controlled the Ocwen Enterprise through direct and/or effective control of its participants, including the Ocwen and Altisource Entities, who constitute “Erbey’s Empire.”²¹ Erbey is the former CEO of Ocwen Financial, the Executive Chairman of Ocwen Servicing and former Director and Chairman of the Board of four related Altisource companies, including Altisource Portfolio Solutions S.A., Altisource Residential Corporation, Altisource Asset Management Corporation, and Home Loan Servicing Solutions, Ltd. Erbey is the single largest shareholder of Ocwen Financial and the Altisource Parent.
- b. Under Erbey’s direction, Ocwen Financial’s former loan servicing arm, Ocwen Solutions, was spun off to create the Altisource Parent. Erbey retained effective control over the Altisource Parent as part of the spin-off. Ocwen Financial’s SEC filings acknowledged the potential conflicts of interest created by the close relationship between Erbey and the Ocwen and Altisource Entities.²²
- c. The Chief Risk Officer of both Ocwen Financial and the Altisource Parent reporting directly to Erbey. Consent Order ¶ 23.
- d. In 2012, Ocwen purchased Erbey’s personal residence for \$6.5 million – 50% more than Erbey paid to purchase it in 2006.²³
- e. The New York Department of Financial Services ordered Erbey to resign from his control positions within the Ocwen and Altisource Entities. NYDFS specifically found (and the Ocwen Entities stipulated and agreed) that “Mr. Erbey...*has participated in* the approval of a number of transactions between [Ocwen Financial and the Altisource Parent] or from which Altisource received some benefit[.]” Consent Order ¶ 21 (emphasis added). NYDFS’ consent order also found extensive conflicts of interest among the Ocwen and Altisource Entities by virtue of Erbey’s control positions within these entities. NYDFS Consent Order ¶¶ 20-21.
- f. Despite this, Erbey continues to exercise some control over these entities because he remains largest individual shareholder of both the Altisource Parent and Altisource Servicing, and Ocwen Financial.

17. Erbey also has extensive direct contact with California in an individual capacity. In support of his motion to dismiss asserting the Court lacks personal jurisdiction over him, Erbey

²¹ *Altisource Portfolio – Fall of Erbey’s Empire*, Seeking Alpha, March 23, 2015, available at <http://seekingalpha.com/article/3020316-altisource-portfolio-fall-of-erbeys-empire> (last visited April 1, 2015).

²² Ocwen’s SEC Form 8-K filed July 20, 2009 located at http://www.sec.gov/Archives/edgar/data/873860/000101905609000723/ocn_8k.htm.

²³ Ocwen Financial 2013 SEC Form 10-k, p. F-059, available at <http://www.sec.gov/Archives/edgar/data/873860/000144530514000799/a2013123110k.htm> (last visited April 3, 2015); *Ocwen’s Rapid Growth Puts Spotlight on Its Practices*, Wall Street Journal, December 7, 2012, available at <http://www.wsj.com/articles/SB10001424127887324640104578163461378035442>.

declared, “I have not been a partner, member, shareholder, director, or officer in a partnership, LLC, or corporation that was formed or had a principal place of business in California for over 25 years.” Dkt. No. 39-01 at ¶ 3. This statement is demonstrably false. As of 2013, Erbey was a director of at least two active California corporations, including “NHPAHP Affordable Housing Corporation CA 14” and “NHPAHP Affordable Housing Corporation CA5.”

IV. INTRA-DISTRICT ASSIGNMENT

18. Consistent with Northern District of California Civil Local Rule 3-5(b), assignment to the San Jose Division is appropriate under Civil Local Rule 3-2(c) and 3-2(e), because acts giving rise to the claims at issue in this lawsuit occurred, among other places, in this District, in Santa Clara County, California.

V. FACTUAL ALLEGATIONS

A. Home Mortgage Servicing Industry

19. The single family home mortgage servicing industry consists of three players: (1) borrowers who obtain mortgages for one- to four-family residential properties; (2) the trusts and investors who own borrowers’ mortgages and derive income from borrowers’ principal and interest payments; and (3) mortgage servicers that collect borrowers’ mortgage payments, pass the principal and interest on to the owner and profit from the fees for ancillary services.

20. For more than thirty years, mortgages typically have been “pooled” to create an investment vehicle, often denominated as a trust. This practice exploded during the financial crisis along with a significant loosening of lending standards. Interests in the trusts have been sold to investors that own interests in payment streams generated by principal and interest payments by the borrowers. These interests are called mortgage backed securities.

21. A mortgage servicer (such as Ocwen Servicing) is a company to which borrowers pay their mortgage loan payments and which performs other services in connection with mortgages and mortgage-backed securities. Servicers perform services including: collecting payments from borrowers; applying the payments as provided by the mortgage agreement; forwarding principal and interest to the owner; assessing and collecting money for any distressed mortgage services as provided by the mortgage contract for such things as late payments, property inspection fees, appraisal fees,

1 BPOs, foreclosure auctions and title examinations; managing any escrow created for the payment of
2 taxes and/or insurance; and default and delinquency related activities such as pursuing collections or
3 foreclosing on borrowers' homes.

4 22. Often, as is the case with Ocwen Servicing, the servicer did not originate the loans it
5 services but became the servicer by purchasing the "mortgage servicing rights" or by entering into a
6 contract with a "master servicer" to act on its behalf as a "subservicer." This occurs at various times
7 throughout the life of the mortgage – including when the borrower is delinquent in payments and may
8 need the servicer's assistance to avoid foreclosure.

9 23. Under these servicing agreements, the servicer collects the borrower's payments for
10 principal and interest and passes them along to the owner. In contrast, the servicer collects the
11 borrower's payments for ancillary costs (such as the Distressed Mortgage Fees) and profits from them.
12 Thus, every dollar a borrower pays in fees (as opposed to principal and interest) is a dollar of revenue
13 for the servicer. Importantly, this creates a perverse incentive for servicers such as Ocwen Servicing,
14 who have little interest in keeping a loan performing and a vastly greater interest in maximizing fees,
15 including fees resulting from distressed mortgages. As a Member of the Board of Governors of the
16 Federal Reserve System explained, "[w]hile an investor's financial interests are tied more or less
17 directly to the performance of a loan, the interest of a third-party servicer are tied to it only indirectly,
18 at best. The servicer makes money, to oversimplify it a bit, by maximizing fees earned and minimizing
19 expenses while performing the actions spelled out in its contract with the investor.... The broad grant
20 of delegated authority that servicers enjoy under pooling and servicing agreements (PSAs), combined
21 with an effective lack of choice on the part of consumers, creates an environment ripe for abuse."²⁴

22 24. For loan servicers like Ocwen Servicing desiring to maximize revenue and profit from
23 servicing loans, the right to charge servicing fees is "ripe for abuse." Because the money Ocwen
24 Servicing can generate from servicing fees is not linked to money generated from principal and
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26 ²⁴ Sarah Bloom Raskin, Member Board of Governors of the Federal Reserve System, Remarks at the
27 National Consumer Law Center's Consumer Rights Litigation Conference, November 12, 2010,
28 available at <http://www.federalreserve.gov/newsevents/speech/raskin20101112a.htm> (last visited
January 22, 2012).

1 interest, Ocwen Servicing makes more money on defaulting mortgages supposedly requiring many
 2 services than on performing loans requiring few services. In short, Ocwen Servicing is incentivized
 3 to grow its revenue and profits by finding ways to charge borrowers additional fees, and distressed
 4 borrowers are ripe for exactly that.

5 25. Mortgage contracts between borrowers and lenders, which provide for the terms under
 6 which mortgage servicers must perform their jobs, generally consist of two documents, a promissory
 7 note and mortgage or deed of trust. These mortgage contracts, including both of their typical
 8 documents, are substantially similar for typical borrowers because they must conform to the standard
 9 Fannie Mae / Freddie Mac form contracts, and because they are most easily pooled for reinvestment
 10 when they are essentially fungible.

11 **B. Ocwen Servicing Operates its Subprime Mortgage Servicing Business to Generate**
 12 **Fees**

13 26. Ocwen Servicing is a mortgage servicer of single-family mortgages (*i.e.*, one to four-
 14 family homes), including the mortgages of Plaintiffs and members of the putative class and subclasses
 15 defined below. Ocwen Financial touts Ocwen Servicing as being the fourth largest mortgage servicer
 16 in the United States, and services over \$400 billion of mortgage loans. According to Ocwen
 17 Financial's 2013 10-K, California has Ocwen Servicing's largest concentration of loans, which make
 18 up approximately 15% of Ocwen Servicing's total loans serviced. Ocwen Servicing is one of the
 19 nation's largest "subprime" mortgage servicers, managing more than 1/4 of all outstanding subprime
 20 loans in the United States. According to Ocwen Financial's October 31, 2014 Quarterly Report,
 21 Ocwen Servicing then serviced nearly 730,000 subprime loans with an unpaid principal balance of
 22 over \$123 billion. Ocwen Servicing is also the largest nonbank servicer in the United States.
 23 "Subprime" loans are those offered at a higher interest rate to individuals who do not qualify for
 24 traditional "prime" loans. Such subprime loans are often given by nontraditional lenders to persons
 25 with lower credit ratings or fewer assets, who may have greater problems making their mortgage
 26 payments. These are also the borrowers that are the most likely be to be subject to predatory lending
 27 practices. Generally speaking, subprime borrowers are of modest economic means, and are the most
 28 vulnerable to falling behind on their mortgage payments, and hence the most likely to need help from

1 their servicer. From Ocwen Servicing's perspective, this translates to greater opportunities to collect
 2 fees and increase revenue and profits from servicing subprime as opposed to prime loans.

3 27. Thus, the gist of Ocwen Servicing's business is to acquire the servicing rights for
 4 mortgage loans that are in default already before Ocwen Servicing acquired them. As recently reported
 5 in the Atlanta Business Chronicle:

6 Ocwen (NYSE: OCN) runs call centers and other tools to rework or force repayment on
 7 mortgages that have gone sour. The idea, [Paul] Koches²⁵ said, is that it's better to keep a
 8 person in their house, paying something, than to kick them out and get nothing at all. Ocwen
 takes over the distressed loans of other banks and then calls the borrowers to renegotiate.²⁶

9 28. To put a good face on this, Ocwen Servicing presents itself as committed to helping
 10 borrowers whose mortgage loans it services, that it has technology allowing it to lower loan re-default
 11 rates, and that it has the ability to keep people from defaulting on loans. Ocwen Servicing thus spins
 12 its business as goodwill using the slogan "Helping Homeowners is What We Do!" rather than what it
 13 truly is – selectively profiting directly from borrowers' financial distress.

14 29. Under the mortgage servicing rights that Ocwen Servicing acquires, Ocwen Servicing
 15 is authorized to assess reasonable and appropriate fees and charges as provided for in the mortgage
 16 agreement. Whether or not they are contractually authorized to assess any or all of the fees at issue in
 17 this action, they cannot charge or collect fees that are unlawful, unfair or the product of a self-dealing
 18 fraudulent conspiracy under federal or state laws.

19 30. Ocwen Servicing advances the money to pay fees, charges or premiums, and retains
 20 the right to recover the amounts advanced from borrowers. Ocwen Servicing then adds these amounts
 21 to borrowers' loans to collect the amounts advanced. In other words, when Ocwen Servicing performs
 22 a Distressed Loan Service such as a property inspection, Ocwen Servicing pays a third party for the
 23 service then adds the cost on to the borrower's bill.

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 26 ²⁵ Paul Koches is the Executive Vice President and General Counsel of Ocwen Financial Corp.

27 ²⁶ "Ocwen Financial Spends \$306M On Bad Loans", Atlanta Business Chronicle (Nov. 11, 2011)
 28 which can be found at: <http://www.bizjournals.com/atlanta/print-edition/2011/11/11/ocwen-financial-spends-306m-on-bad.html?page=all>.

1 31. As reported by state and federal regulators and made the subject of consent decrees
2 entered with the Ocwen Entities, described herein, Ocwen Servicing, contrary to its commitment to
3 homeowners, routinely, amongst other things: (i) fails to timely and accurately apply payments made
4 by borrowers; (ii) fails to maintain accurate account statements; (iii) charges unauthorized inflated
5 fees for Distressed Mortgage Services; (iv) charges fees for authorized but unnecessary Distressed
6 Mortgage Services, such as force-place insurance; (v) provides false and misleading information to
7 borrowers regarding their loans; and (vi) provides false or misleading information to borrowers about
8 their ability to modify their mortgages.²⁷

9 32. Using these unfair and fraudulent practices, Ocwen Servicing has made it its business
10 to maximize revenue by, among other things, assessing improper fees and charges to mortgage loans,
11 and making it difficult for borrowers to modify their existing mortgages to have more favorable terms.
12 Ocwen Servicing charges borrowers for these needless, unfair, and unlawful charges in order to
13 maximize its revenue and profits from its servicing operations. However, Ocwen Servicing did not
14 act or profit alone in these practices.

15 33. As described herein, Ocwen Servicing's conduct was part of the Ocwen Enterprise's
16 scheme of undisclosed self-dealing and violates federal laws and regulations.

17 34. Indeed, as a result of the financial crisis that resulted, in part, from subprime lending
18 practices, Congress created the Consumer Financial Protection Bureau, authorized by the Dodd-Frank
19 Wall Street Reform and Consumer Protection Act, for the purpose of, amongst other things, overseeing
20 mortgage-servicing operations. The CFPB is responsible for promoting fairness and transparency in
21 mortgages and other financial products and services.

22 35. As part of this mandate, the Consumer Financial Protection Bureau has authority to
23 enforce the federal consumer protection laws, under which Defendants' conduct is prohibited and may
24 declare practices to be unlawful because it is "unfair" and "abusive" if certain circumstances are met.

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27 ²⁷ See Complaint filed by the Consumer Finance Protection Bureau and 49 states attorneys general at
28 www.consumerfinance.gov/f/201312_cfpb_complaint_ocwen.pdf, pp. 12-13 (last visited January 22,
2015).

1 See 12 U.S.C. § 5531(c) (unfairness), (d) (abusive). See also 12 U.S.C. 5536 (prohibited acts). An
 2 “unfair” practice under the Dodd-Frank Act is one where “the act or practice causes or is likely to
 3 cause substantial injury to consumers which is not reasonably avoidable by consumers” and “such
 4 substantial injury is not outweighed by countervailing benefits to consumers or to competition.” 12
 5 U.S.C. § 5531(c). An “abusive” practice is one where the conduct, among other things, “materially
 6 interferes with the ability of a consumer to understand a term or condition of a consumer financial
 7 product or service” or “takes unreasonable advantage of” of a consumer’s “lack of understanding . . .
 8 of the material risks, costs, or conditions of the product or service” or “the inability of the consumer
 9 to protect” his or her interests “in selecting or using a consumer financial product or service.” *Id.* §
 10 5531(d). The conduct described herein meets these definitions of federally prohibited conduct, and,
 11 as set forth more fully below, also supports Plaintiffs’ causes of action asserted here.

12 36. Similarly, the CFPB has published regulatory guidance for the purpose of identifying
 13 and eliminating “risks to consumers,” such as “potentially unfair, deceptive, or abusive acts or
 14 practices (UDAAPs) with respect to servicers’ interactions with consumers.”²⁸ The CFPB’s
 15 examination guidelines prohibit the following conduct:

- 16 • A representation, omission, act, or practice is deceptive when:
 - 17 (1) the representation, omission, act, or practice misleads or is likely to mislead the
 18 consumer;
 - 19 (2) the consumer’s interpretation of the representation, omission, act, or practice is
 20 reasonable under the circumstances; and
 - 21 (3) the misleading representation, omission, act, or practice is material.
- 22 • An act or practice is unfair when:
 - 23 (1) it causes or is likely to cause substantial injury to consumers;
 - 24 (2) the injury is not reasonably avoidable by consumers; and
 - 25 (3) the injury is not outweighed by countervailing benefits to consumers or to
 26 competition.
- 27 • An abusive act or practice:

28 ²⁸ CFPB Examination Procedures—Mortgage Servicing (January 2014), at 3, available at
http://files.consumerfinance.gov/f/201401_cfpb_mortgage-servicing-exam-procedures.pdf.

- (1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service or
- (2) takes unreasonable advantage of –
 - a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - the inability of the consumer to protect its interests in selecting or using a consumer financial product or service; or
 - the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.²⁹

37. Further, Ocwen’s conduct violates the guidelines of the federal government-sponsored enterprise Fannie Mae, which issues the standard form uniform security instruments used for residential mortgages in the United States, including the Giottas’ mortgage. Fannie Mae requires servicers, including Ocwen Servicing, to have clear written policies regarding fees that “will ensure that fees comply with applicable laws and regulations.” Specifically, Fannie Mae requires servicers, including Ocwen Servicing, to have policies in place regarding property inspections, as follows:

fees may be charged on a repetitive basis only when required or permitted by Fannie Mae’s Guides or otherwise clearly supported by the circumstances relating to a particular loan (e.g., charging a delinquent borrower’s account for monthly property inspections generally would not be a permissible practice unless the servicer determines that the circumstances warrant multiple inspections.³⁰

C. Ocwen Servicing is Part of Defendant Erbey’s Larger Scheme to Overcharge Distressed Borrowers in Conjunction with the Other Defendants

38. Since the Ocwen Enterprise’s inception in or about August of 2009 and continuing as of the date of the filing of this Complaint, Defendants Erbey and the Ocwen and Altisource Entities conspired to increase their financial revenue and profits by overcharging homeowners for services including, property inspections, broker price opinions (“BPOs”), property appraisals, foreclosure auction services and title examinations (collectively “Distressed Mortgage Services,” the fees for which are the “Distressed Mortgage Fees”). Ocwen Servicing accomplishes this by using Altisource

²⁹ *Id.* at 3-4.

³⁰ Fannie Mae Single Family 2011 Servicing Guide, available at <https://www.fanniemae.com/content/guide/svc061011.pdf>.

1 Servicing and other subsidiaries of the Altisource Parent to procure these Distressed Mortgage
2 Services, which is facilitated through the use of mortgage servicing software leased from Altisource
3 Servicing that Ocwen Servicing itself originally designed to manage homeowners' loan accounts and
4 assess fees. The undisclosed self-dealing Ocwen Enterprise was formed and operated as described
5 below.

6 39. Prior to August 2009, Altisource was a subsidiary of Ocwen, then called Ocwen
7 Solutions, that created and maintained Ocwen's mortgage servicing software. Ocwen Solutions'
8 mortgage servicing systems provided technological services throughout the lifecycle of the mortgages
9 serviced by Ocwen Servicing – including triggering the Distressed Mortgage Services and the resulting
10 fees at issue in this case – and also including collections and customer relationship management.
11 Ocwen Financial developed these mortgage servicing systems over a period of more than 20 years at
12 a cost of more than \$150 million.

13 40. On August 10, 2009, Ocwen Financial, under the direction of Erbey and other Ocwen
14 officers, spun off Ocwen Solutions to create a new, independent company called the Altisource Parent.
15 Erbey and other of Ocwen's officers took a large controlling share of the newly-formed Altisource
16 corporation, and would be able to financially profit from the revenues generated by both Ocwen and
17 Altisource.

18 41. When the companies split, Ocwen gave Altisource control of the mortgage servicing
19 software that, up to that point, was used by Owen to run its entire mortgage servicing operations.
20 Given that the software was essential to Ocwen's business, Ocwen "leased" the software from
21 Altisource so that it could continue to service mortgages, essentially creating a cost to Ocwen that did
22 not exist previously, and a revenue source to Altisource from which Erbey and other shareholders
23 could financially benefit. Moreover, Erbey and other officers holding shares in both Ocwen and
24 Altisource were then able to be paid salaries, bonuses, revenue and profits from both companies for
25 the same mortgage services that had been provided exclusively from Ocwen prior to the Altisource
26 split. As part of the Altisource spin-off, Defendant Erbey, Ocwen Financial's Chairman of the Board
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1 and largest individual shareholder owning of 13% of Ocwen Financial's common stock, also became
2 the Chairman of the Board for Altisource.³¹

3 42. At the time of Altisource's spin-off from Ocwen Servicing, Ocwen Servicing
4 immediately became Altisource's single largest customer. Ocwen Servicing remained contractually
5 obligated to purchase mortgage servicing system services from Altisource for eight years after the
6 spinoff. That obligation was later extended three more years through 2020.³² Also at the time of the
7 spin-off, Mr. Erbey became the largest shareholder of the Altisource Parent, holding 27.1% of
8 common stock.³³

9 43. As the Altisource Parent explains its mortgage servicing software, its "Technology
10 Services" are comprised of: (i) REALSuite software applications, including REALServicing that
11 provides automated workflows and reporting through the entire life of a mortgage loan; (ii)
12 REALTrans which automates the ordering, tracking and fulfilling of services related to mortgage
13 servicing; (iii) REALRemit which allows service providers to submit invoices for payment
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17 ³¹ The Altisource Parent was incorporated on November 4, 1999 in Luxembourg as Ocwen
18 Luxembourg S.à r.l. Altisource Portfolio Solutions S.A.. See SEC Form 10-K for the period ended
19 Dec. 31, 2012, available at
20 http://www.sec.gov/Archives/edgar/data/1462418/000110465913009969/a13-2839_110k.htm. The
21 company was renamed Altisource Portfolio Solutions S.à r.l. on May 12, 2009, and converted into the
22 Altisource Parent on June 5, 2009. *Id.* Prior to August 10, 2009, the Altisource Parent was a wholly-
23 owned subsidiary of Ocwen Financial. *Id.*

24 ³² The Altisource Parent SEC Form 10-K for the period ended Dec. 31, 2012, available at
25 http://www.sec.gov/Archives/edgar/data/1462418/000110465913009969/a13-2839_110k.htm
26 ("Ocwen, including its wholly owned subsidiary, Ocwen Mortgage Servicing Inc. ('OMS'), are
27 contractually obligated to purchase certain mortgage services and technology services from us under
28 service agreements. In October 2012, the Ocwen agreement was extended by three years through
2020. Separately, we signed a similar agreement in October 2012 with OMS effective through 2020.)

³³ Mr. Erbey was the Chairman of the Altisource Parent and several other related companies, including
Altisource Residential Corporation, Altisource Asset Management Corporation, and Home Loan
Servicing Solutions Ltd., and held more than \$1 billion in stock in Ocwen and Altisource and their
affiliated companies. See Consent Order Pursuant to New York Banking Law § 44, at page 8, available
at <http://www.dfs.ny.gov/about/ea/ea141222.pdf> (last visited January 30, 2015).

1 electronically; and (iv) REALDoc that generates correspondence associated with mortgage loan
2 servicing.³⁴

3 44. The Altisource Parent's REALSuite platform manages Ocwen Servicing's mortgage
4 loan servicing automatically based on parameters determined by Ocwen Servicing. This includes
5 ordering, managing and paying for Distressed Mortgage Services including property inspections,
6 BPOs and appraisals provided by local third-party vendors convenient to the home with a mortgage in
7 default. Ocwen Servicing also assesses fees for these services through the REALSuite platform.

8 45. This mortgage servicing software that that Ocwen gave to Altisource was used by the
9 Ocwen Enterprise to automatically facilitate the ordering, charging, and payment of the Distressed
10 Mortgage Services described throughout this Complaint. Those communications, which included
11 charging for the Inflated and Duplicative Distressed Mortgage Services, were done electronically over
12 the wires. The communications to borrowers were also created by the same mortgage servicing
13 software, and communicated via the mail or wires to borrowers. These communications were and are
14 essential to the Ocwen Enterprise's operation because they facilitate the very charges at issue in this
15 First Amended Complaint. For the same reason, these communications had/have similar purposes,
16 results, victims and methods of commission, and each is/was connected to the Ocwen Enterprise's
17 operation. These communications occurred continuously since the Ocwen Enterprise's inception
18 (and continue to occur as the Ocwen Enterprise continues to operate) because the Ocwen Enterprise's
19 goal was not to derive inflated revenue from one transaction or several unrelated transactions, but
20 rather to derive inflated revenue from the entire class of Distressed Mortgage Fees alleged throughout
21 this Complaint. Because Ocwen Servicing services mortgages for millions of homeowners
22 nationwide, these communications were transmitted over the mail and/or wires at least twice and likely
23 millions of times throughout the life of the Ocwen Enterprise.

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27 ³⁴ SEC Form 10-for Altisource Portfolio Solutions S.A., for the period ended December 31, 2013,
28 available at http://www.sec.gov/Archives/edgar/data/1462418/000110465913009969/a13-2839_110k.htm.

1 46. The charges for the Distressed Mortgage Services ordered and facilitated by
2 Altisource's mortgage servicing software were passed from Ocwen to Altisource, allowing Erbey and
3 Altisource's other officers to profit from services that had previously been provided by Ocwen
4 internally. Altisource Servicing charges additional fees for these Distressed Mortgage Services that
5 are passed along to borrowers by Ocwen Servicing. Shifting the costs, revenue and profits from
6 Ocwen to Altisource for the Distressed Mortgage Services also allowed them to evade regulatory
7 scrutiny since they were being provided by what was held out as an independent third-party company,
8 with charges negotiated at arms-length.

9 47. In reality, Altisource was anything but an independent company. Erbey and other
10 Ocwen officers maintained a large controlling stake in both Ocwen and Altisource by virtue of the
11 amount of stock they owned in both companies, and by virtue of their positions in the companies as
12 directors and/or officers. Further, to avoid any internal criticism to the obvious undisclosed self-
13 dealing and conflicts of interest between Ocwen and Altisource, Erbey placed Ocwen's chief risk
14 officer in a dual role within Altisource as its chief risk officer to ensure compliance with the Ocwen
15 Enterprise, not the law.

16 48. In its SEC filings, Ocwen Financial acknowledged the potential conflicts of interest
17 created by the close relationship between Erbey and the Ocwen and Altisource Entities.³⁵ Among
18 other risks, Ocwen Financial acknowledged that Mr. Erbey and other Ocwen Financial officers and
19 directors had potential conflicts of interests due to the ongoing business relationships between the
20 companies, and due to Mr. Erbey's role as CEO and Chairman of the Board of Ocwen Financial, while
21 also becoming such a substantial stockholder in the Altisource Parent and its Chairman of the Board
22 as well.

23 49. The conflicts of interests due to the ongoing relationship between the Ocwen Entities
24 and Altisource Entities were identified by Benjamin Lawskey, Superintendent of the New York State
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27 ³⁵ Ocwen's SEC Form 8-K filed July 20, 2009 located at
28 http://www.sec.gov/Archives/edgar/data/873860/000101905609000723/ocn_8k.htm.

1 Department of Financial Services in a public letter to Ocwen dated February 26, 2014.³⁶ In that letter,
 2 Mr. Lawskey noted that Mr. Erbey was not only the Executive Chairman of Ocwen Financial, but was
 3 also the largest shareholder of each of several Altisource companies with business ties to the Ocwen
 4 Entities, including Altisource Portfolio Solutions, S.A., Altisource Residential Corporation, Altisource
 5 Asset Management Corporation, and Home Loan Servicing Solutions Ltd. Moreover, Mr. Lawskey
 6 noted that Altisource Portfolio Solutions, S.A.'s Chief Risk Officer was also Ocwen Financial's Chief
 7 Risk Officer, reported directly to Mr. Erbey in both capacities, and had his salary paid entirely by
 8 Ocwen. The result of the cozy relationship between Ocwen and Altisource, both being controlled by
 9 Erbey, was that borrowers were overcharged for Distressed Mortgage Services, including by virtue of
 10 extra costs built into all Distressed Mortgage Services charged through Altisource, and by the charging
 11 of duplicative Distressed Mortgage Services.

12 50. Indeed, after investigating the very conflicts of interest inherent in the Ocwen-
 13 Altisource corporate relations complained about herein, Ocwen stipulated and agreed with New
 14 York's Department of Financial Services that Ocwen's conduct resulted in borrowers being
 15 overcharged for Distressed Mortgage Services, and Erbey agreed to resign as an officer and director
 16 from all Ocwen and Altisource-related companies as described below. However, despite his removal
 17 as a director and officer in Ocwen and Altisource companies, Erbey still maintains 16.9% of the
 18 common stock in Ocwen, and 26% of Altisource's stock.

19 **D. State and Federal Investigations of the Ocwen Enterprise**

20 51. Ocwen stipulated with the NYDFS that the Ocwen Enterprise overcharged borrowers
 21 for mortgage services. As part of New York's continued investigation into the Ocwen Enterprise, it
 22 was revealed that Ocwen Servicing used an Altisource subsidiary, namely Hubzu, for online auctions
 23 of homes of borrowers who were facing foreclosure.³⁷ Hubzu charged Ocwen Servicing up to three
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25 _____
 26 ³⁶ See February 26, 2014 letter from Benjamin M. Lawskey to Timothy Hayes, General Counsel for
 27 Ocwen Financial Corporation attached hereto as Exhibit 2.

28 ³⁷ See April 21, 2014 letter from Benjamin M. Lawskey to Timothy Hayes, General Counsel for Ocwen
 Financial Corporation attached hereto as Exhibit 3.

1 times the fees it charged non-Ocwen customers, which were passed along to the borrowers facing
2 foreclosure. Mr. Lawskey noted his concerns about the Ocwen Enterprise's self-dealing, in that it
3 appeared the companies were charging struggling borrowers for inflated mortgage servicing-related
4 fees.

5 52. On August 4, 2014, Mr. Lawskey sent another letter raising further concerns about
6 Ocwen Servicing's use of related companies to provide fee-based mortgage servicing, specifically
7 Altisource Servicing.³⁸ Mr. Lawskey stated that Ocwen Servicing had funneled as much as \$65 million
8 in fees from distressed homeowners to Altisource Servicing "for minimal work." Ocwen Servicing's
9 use of related companies to provide fee-based services also raised concerns regarding whether the
10 services were priced fairly based on arms-length negotiations, or whether they were simply unlawful
11 up-charges.

12 53. On October 21, 2014, Mr. Lawskey sent yet another letter to Ocwen Servicing regarding
13 its mortgage servicing practices related to the company's back-dating of critical letters sent to
14 mortgage borrowers in default.³⁹ Mr. Lawskey cited several examples of Ocwen Servicing telling
15 mortgage borrowers that they were in danger of foreclosure if they did not respond by a date prior to
16 the letter actually being sent to the borrower. Other time-sensitive, backdated letters notified
17 financially stressed borrowers that their request for loan modifications were denied, and that they had
18 to appeal such denial by an imminent and unrealistic date or they would not be able to modify their
19 mortgage loans. Ocwen Financial's CEO, Ron Faris, wrote an open letter apologizing for the
20 misdating of borrower letters, admitting that in some instances, "there was a significant gap between
21 the date on the face of the letter and the date it was actually generated."⁴⁰

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24 ³⁸ See August 4, 2014 letter from Benjamin M. Lawskey to Timothy Hayes, General Counsel for Ocwen
Financial Corporation attached hereto as Exhibit 4.

25 ³⁹ See October 21, 2014 letter from Benjamin M. Lawskey to Timothy Hayes, General Counsel for
26 Ocwen Financial Corporation attached hereto as Exhibit 5.

27 ⁴⁰ See October 24, 2014 Open Letter to Homeowners Concerning Letter Dating Issues at
28 <http://shareholders.ocwen.com/releasedetail.cfm?ReleaseID=878151> (last visited January 22, 2015).

1 54. NYDFS and the Ocwen Entities entered into a Consent Order dated December 19,
2 2014.⁴¹ Pursuant to the Consent Order, the Ocwen Entities stipulated and agreed they engaged in
3 certain wrongdoing, including amongst other things the wrongdoing described above. Unlike many
4 settlements of legal claims, the Ocwen Entities neither denied nor contested that they engaged in this
5 wrongdoing described in the Consent Order.

6 55. The Ocwen Entities' stipulation to wrongdoing in the Consent Order supports
7 Plaintiffs' allegations that Defendants engaged in the practices described herein. With respect to the
8 Overcharged Distressed Mortgage Fees, the Ocwen Entities agreed that through Ocwen's relationship
9 with the Altisource Parent, the Ocwen Entities overcharged borrowers for fee-based services. Consent
10 Order ¶ 22. With respect to the Duplicative Distressed Mortgage Services, the Ocwen Entities agreed
11 their computer systems contained duplicate process codes initiating the same servicing functions.
12 Consent Order ¶ 17.

13 56. Pursuant to the Consent Order, the Ocwen Entities committed to report to NYDFS on
14 a semi-annual basis all fees charged to New York borrowers by the Ocwen Enterprise. Consent Order
15 ¶ 53. The purpose of these reports is to evaluate whether the fees "are commensurate with market
16 rates" or "reasonably related to actual expenses incurred." *Id.* The Ocwen Entities also agreed that
17 the "[m]aximum rates for services that are established by government-sponsored enterprises or other
18 investors may not be presumed to be the market rate and may not substitute for actual assessment of
19 market rates." *Id.*

20 57. While the Ocwen Entities also committed to provide some cash relief to New York
21 borrowers exclusively as part of the Consent Order, the New York Consent Order did not provide any
22 direct cash relief for the charges and fees assessed from the Ocwen Entities' specific wrongdoing
23 alleged throughout this Complaint. Consent Order ¶¶ 24-25. Furthermore, the Consent Order
24 expressly provides this relief does not limit borrowers' rights to hold the Ocwen Entities accountable
25 for their unlawful conduct. *Id.* at ¶¶ 64-65.

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27
28 ⁴¹ The Consent Order is attached hereto as Exhibit 6.

58. It was not until Mr. Lawsky, Superintendent of the New York State Department of Financial Services, sent his letter dated February 26, 2014 that the Ocwen Enterprise's undisclosed self-dealing and conspiratorial conduct described herein was first (and only partially) revealed publicly.

59. The Consent Order also included Mr. Erbey's agreement that, by January 16, 2015, Mr. Erbey would resign and have no directorial, management, oversight, consulting, or any other role at Ocwen Financial or any related party, or at any of Ocwen Financial's or the related parties' affiliates or subsidiaries, and to resign as Chairman of the Board of Directors of each of four related the Altisource Parent companies: Altisource Portfolio Solutions S.A., Altisource Residential Corporation, Altisource Asset Management Corporation, and Home Loan Servicing Solutions, Ltd. According to Ocwen's 8-K filed with the SEC on January 20, 2015, Erbey "retired" from Ocwen's Board and as an officer of the company on January 16, 2015.⁴²

60. The New York Department of Financial Services is not the only regulator who has taken notice of Ocwen Servicing's improper use of the affiliated Altisource Entities. On December 19, 2013, the Federal Consumer Financial Protection Bureau ("CFPB") and the attorneys general for 49 states filed a complaint against Ocwen for their mortgage servicing practices.⁴³ Among other things, the CFPB and attorneys general alleged that Ocwen unlawfully and unfairly charged unauthorized fees for Distressed Mortgage Services, failed to timely or accurately apply payments made by borrowers, and provided false and misleading information to borrowers concerning the status of loan modification requests and foreclosure efforts. The Ocwen Enterprise's participants and their conspiratorial conduct described herein were not mentioned or otherwise revealed in the CFPB's complaint.

⁴² See Ocwen Financial SEC Form 8-K filed January 16, 2015 available at <http://google.brand.edgar-online.com/displayfilinginfo.aspx?FilingID=10415213-1084-12051&type=sect&TabIndex=2&companyid=10413&ppu=%252fdefault.aspx%253fsym%253docn>

⁴³ Available at www.consumerfinance.gov/f/201312_cfpb_complaint_ocwen.pdf (last visited January 22, 2015).

1 61. The result of the CFPB action was a federal Consent Judgment affecting 49 states
2 entered on February 26, 2014 which required Ocwen to provide \$2 billion in loan modifications to
3 struggling borrowers, but which did not provide any direct cash relief to borrowers for the charges and
4 fees assessed from Ocwen's improper Distressed Mortgage Services.⁴⁴ Again, Altisource, Erbey and
5 their conspiratorial conduct described herein were not mentioned or otherwise revealed in the Consent
6 Judgment.

7 62. The California Department of Business Oversight ("CADBO") also investigated and
8 pursued Ocwen. In early 2013, CADBO commenced a regulatory examination of Ocwen to evaluate
9 its compliance with California law, specifically the California Residential Mortgage Lending Act and
10 California's Homeowner Bill of Rights. As part of this examination, CADBO made repeated requests
11 for information, including requests for loan files. Despite multiple requests, an order from the
12 commissioner, and an order from an administrative law judge, Ocwen repeatedly refused to provide
13 the necessary information. California thus had no choice but to commence a proceeding to suspend
14 Ocwen's business license, thereby prohibiting them from servicing mortgages in California.

15 63. In January 2015, Ocwen and CADBO entered into a Consent Order. Pursuant to this
16 order, Ocwen agreed: (1) not to acquire mortgage servicing rights for loans secured by properties in
17 California without CADBO's approval; (2) to pay a \$2.5 million civil penalty; and (3) to pay a third
18 party auditor to conduct a compliance and servicing review of Ocwen. As a department spokesman
19 explained, "[O]cwen failed to comply with requests for information. They failed to comply with a
20 subpoena for information. They violated a lawful order from the commissioner. And they failed to
21 comply with an order from an administrative judge. We can't countenance that kind of behavior."⁴⁵

22 64. As further fallout from the regulators' scrutiny over Ocwen Financial, Ocwen
23 Financial's current CEO, Ronald Faris, announced the company would withdraw from the business of
24 servicing mortgages backed by the U.S. government, and intended to sell such servicing rights for
25

26 ⁴⁴ See Exhibit 7 attached hereto ("Consent Judgment").

27 ⁴⁵ See E. Scott Reckard, California Seeking to suspend Ocwen Financial's mortgage license, L.A.
28 Times, January 12, 2015.

1 approximately \$1.7 billion. Ocwen Servicing intends to continue to service non-government backed
2 mortgages going forward.

3 65. Despite Erbey's involuntary "retirement" at the hands of the New York State
4 Department of Financial Services, the undisclosed self-dealing Ocwen Enterprise he set in motion
5 continues to operate. Moreover, Erbey still retains a degree of control over the Ocwen Enterprise,
6 including by virtue of remaining the largest individual shareholder of both the Altisource Parent and
7 Altisource Servicing. Thus, despite Erbey's "retirement," the Ocwen Enterprise's conduct is ongoing
8 and continues to harm borrowers. As a result of the unlawful Ocwen Enterprise, many thousands of
9 borrowers were cheated out of millions of dollars, none of which has yet been repaid or otherwise
10 compensated.

11 **E. Harm to Borrowers Resulting from Ocwen, Altisource and Erbey's Actions**

12 **1. Inflated Distressed Mortgage Fees.**

13 66. When a borrower misses a payment and goes into "default," Ocwen Servicing assesses
14 various fees for Distressed Mortgage Services, and adds them to the borrower's outstanding principal
15 and interest on the loan. These fees are the Distressed Mortgage Fees. As detailed herein, the
16 Distressed Mortgage Services for which Ocwen Servicing overcharges borrowers include: property
17 inspections, property appraisals, broker price opinions ("BPOs"), property valuation expenses,
18 foreclosure auctions, and title examinations. Plaintiffs may learn of other Distressed Mortgage
19 Services for which Ocwen Servicing overcharged borrowers fees as part of the Ocwen Enterprise, and
20 reserve their right to amend their complaint accordingly.

21 67. Ocwen's practice and procedures are that payments made after a missed payment must
22 **first** go to pay the Distressed Mortgage Fees **before** being applied to the outstanding principal, interest
23 or escrow account. Thus, if a person pays only the normal mortgage payment amount owed on a
24 month following a "default," there will not be sufficient funds in the payment to cover the principal
25 and interest due after paying the Distressed Mortgage Fees. This obvious and foreseeable shortfall
26 leads to another default, and additional charges and fees, and will continue to do so each month as the
27 payment to cover the principal and interest falls ever more short.
28

68. This cascade of fees added monthly to a “default” loan consequently will often put borrowers further and further behind in their payments, keeping them delinquent and unable to catch up on their mortgage payments without going through a loan modification. This cascade of fees therefore can drive borrowers further into default, and further towards foreclosure, leading to even more Distressed Mortgage Services and Distressed Mortgage Fees imposed by Ocwen Servicing. This is true even if the default is manufactured, for example as a result of the misapplication of borrower payments. The assessment of inflated Distressed Mortgage Fees not only harms borrowers by charging them for fees they should not have to pay, but also further harms borrowers by making it difficult, if not impossible, for mortgage borrowers to keep current on their loans after even one missed monthly payment. Additionally, borrowers who fall further and further behind in their payments due to Ocwen Servicing’s assessment of illegal and unfair Distressed Mortgage Fees have their credit scores damaged. Ocwen Servicing reports mortgage payment history, including delinquencies, to credit reporting companies. Borrowers kept in default by Ocwen Servicing’s conduct therefore can lose their ability to get other loans – including loans to refinance their Ocwen Servicing-serviced loans – and can face higher rates on any loans they are able to obtain.

69. The Ocwen Entities stipulated to the fact that they, through their close relationship with related companies including, in particular, the Altisource Parent, overcharged borrowers for Distressed Mortgage Fees such as fees related to auctions and short sales. Consent Order, ¶ 22.

70. Indeed, as a result of the financial crisis that resulted, in part, from subprime lending practices, Congress created the Consumer Financial Protection Bureau, authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act, for the purpose of, amongst other things, overseeing mortgage-servicing operations. The CFPB is responsible for promoting fairness and transparency in mortgages and other financial products and services.

71. By splitting off its internal Distressed Mortgage Service function to Altisource Servicing, a purported “third party” non-mortgage-servicing company, the Ocwen Enterprise was able to hide high revenue and profits made from Distressed Mortgage Fees. The Ocwen Enterprise did this by, amongst other things, having Altisource negotiate lower servicing charges from service providers such as brokers, inspectors and appraisers, with a promise of higher work volume and under the guise

1 of being a third-party that had to charge the ultimate purchaser, Ocwen, a higher amount. Thus, the
 2 costs passed onto Ocwen's borrowers included revenue and profits built in for the Ocwen Entities as
 3 well as the Altisource Entities, and Erbey earned a salary, bonus, benefits and increased stock options
 4 and value by being on both ends of the deal. However, because Altisource was not a mortgage servicer
 5 its operations were not subject to the same regulatory oversight as Ocwen.

6 72. The Ocwen Enterprise also overcharged borrowers for Distressed Mortgage Fees by
 7 virtue of its "leasing" the computer software it created and gave to Altisource when it split Altisource
 8 into its own company, a cost of which would have been added to Distressed Mortgage Fees.

9 73. Plaintiffs have also identified several of the specific Distressed Mortgage Fees Ocwen
 10 Servicing charges borrowers that have already been found to be inflated by virtue of the Ocwen
 11 Enterprise's scheme (the "Inflated Distressed Mortgage Fees"), including the following:

- 12 a. Prior to spinning-off its internal Distressed Mortgage Service function to
 13 Altisource Servicing, Ocwen Servicing paid real estate agents \$45-\$50 to
 14 perform a BPO.⁴⁶ Since the spin-off to Altisource Servicing, Ocwen Servicing
 charges struggling homeowners approximately \$100 for each BPO.
- 15 b. Ocwen Servicing uses another Altisource subsidiary, Hubzu, for its foreclosure
 16 auctions, that is retained through Altisource Servicing. According to Mr.
 17 Lawsky, Hubzu charges Ocwen Servicing up to three times the fees it charges
 non-Ocwen customers for the same services. These inflated fees are passed
 onto those borrowers who are able to stop the foreclosure auction from going
 through.
- 18 c. Ocwen Servicing hires title examiners through Altisource Servicing or through
 19 the use of the Altisource Parent's software. Upon information and belief,
 Ocwen Servicing charges borrowers artificially inflated fees for title
 examinations as part of the Ocwen Enterprise.
- 20 d. The Distressed Mortgage Fees described above are artificially marked-up due
 21 to Ocwen's use of Altisource and through Ocwen Financial's lease of
 22 Altisource's software. These artificially inflated costs are passed along to
 borrowers by assessing the inflated amounts on borrowers' loans, and
 23 misclassifying them as necessary Distressed Mortgage Fees.

24 74. Plaintiffs have detailed the publicly available details of how Ocwen Servicing and the
 25 other members of the Ocwen Enterprise overcharged for Distressed Mortgage Fees, all of which was

26 _____
 27 ⁴⁶ See *Cartel Asset Mgmt. v. Ocwen Fin. Corp.*, 249 F. App'x 63, 72 n.9 (10th Cir. 2007) (summarizing
 28 testimony of William C. Erbey that Ocwen would pay an agent or broker approximately \$45 to \$50 to do a BPO).

done to increase the overall revenue and profits of the Ocwen Enterprise. Plaintiffs reserve the right to amend their complaint to add additional detail regarding these and other up-charged Distressed Mortgage Fees, or to add additional detail regarding other as-yet undisclosed methods by which the Ocwen Enterprise charged borrowers for up-charged and inflated Distressed Mortgage Fees.

2. Duplicative Distressed Mortgage Services

75. In addition to charging borrowers artificially inflated Distressed Mortgage Fees, Ocwen Servicing also charges borrowers fees for Distressed Mortgage Services that should never have been performed at all (the “Duplicative Distressed Mortgage Services”). This is because Ocwen Servicing orders and charges borrowers for different Distressed Mortgage Services performed contemporaneously that accomplish the same thing, or imposes sequential and repetitive charges for services that provide no benefit to the borrower or the lender. Ocwen unilaterally adds charges and fees to borrower statements without giving the borrower any meaningful way of disputing them. Moreover, these charges serve no meaningful purpose but to increase Ocwen’s revenue profits at the expense of borrowers and lenders.⁴⁷

76. Ocwen Servicing charges distressed borrowers a “property inspection fee” that Ocwen Servicing defines as being “for an inspection of the property to make sure that it is still in good condition.”⁴⁸

77. Ocwen Servicing obtains a BPO when a borrower expresses interest in a “short sale” or in advance of a foreclosure sale. A BPO is the process a hired sales agent utilizes to determine an

⁴⁷ In fact, the “lenders” (the investors in the securities backed by the pooled mortgages) for the loans Ocwen services have themselves complained that Ocwen has improperly serviced the mortgages at issue in this lawsuit for many of the same reasons that form the basis for Plaintiffs’ claims. *See, e.g.*, “Notice of Non-Performance to Ocwen Financial Corporation as servicer or master servicer...,” located online at <http://www.gibbsbruns.com/certificateholders-issue-notice-of-non-performance-identifying-alleged-failures-by-ocwen-financial-corporation-as-servicer-or-master-servicer-to-perform-covenants-and-servicing-agreements-in-119-residential-mortgage-backed-securities-trusts-01-23-2015/>; and “Hedge fund claims Ocwen breached bond covenants,” located online at <http://www.housingwire.com/articles/32700-hedge-fund-claims-ocwen-breached-bond-covenants>.

⁴⁸ *See* Ocwen Servicing’s definitions of various charges provided to Plaintiffs, attached hereto as Exhibit 8, p. 5.

1 estimated selling price of a real estate property. Ocwen defines its BPOs to be “determining the value
 2 and condition of the property, using a certified Real Estate Agent.”⁴⁹ Upon information and belief,
 3 Ocwen Servicing sometimes calls its BPOs “property valuation expenses” on borrowers’ statements.
 4 Because Ocwen Servicing conceals BPO services under the undefined moniker “property valuation
 5 expenses,” Ocwen Servicing conceals that the company assesses, charges and collects fees from
 6 borrowers for a service that includes determining the condition of the homeowner’s property, which
 7 makes any property inspection performed and charged to the borrower at or around the same time as
 8 the service for the “property valuation expense” entirely duplicative.

9 78. Ocwen Financial also charges borrowers for appraisals. An appraisal is the process of
 10 developing an opinion of the value of a home. In order to perform a home appraisal, an appraiser must
 11 determine the condition of the home. Ocwen Servicing orders appraisals through Springhouse LLC,
 12 an appraisal management company and subsidiary of the Altisource Parent, through the use of
 13 Altisource’s mortgage servicing software.

14 79. In the case of a BPO or appraisal, the broker or appraiser providing the opinion of value
 15 must determine the condition of the subject property. Any inspection performed around the same time
 16 as a BPO or appraisal would be duplicative because the broker or appraiser would have already
 17 determined the condition of the property as part of their valuation. Thus, any charge to a borrower for
 18 an inspection done around the same time they as a BPO or appraisal would be duplicative and another
 19 way Ocwen Servicing up-charges struggling borrowers. This also happened to Plaintiffs on several
 20 occasions. Ocwen Servicing’s only purpose in ordering and charging for such duplicative inspections
 21 is to generate Distressed Mortgage Fees assessed to and collected from mortgage borrowers.

22 **F. Plaintiffs’ Claims against Defendants**

23 80. Plaintiffs Victor Giotta and Lorelee Giotta entered into a mortgage agreement with
 24 BankUnited, FSB on or around January 19, 2007 that is now being serviced by Ocwen Servicing.⁵⁰

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 26 ⁴⁹ See Exhibit 8, p. 5.

27 ⁵⁰ See Deed of Trust for Victor P. Giotta and Lorelee Giotta, dated January 9, 2007 attached hereto as
 28 Exhibit 9.

81. On or about February 16, 2013 when the Giottas were in default, the servicing rights of Plaintiffs' mortgage loan were transferred to Ocwen Servicing, and Ocwen Servicing continues to service the Giottas' mortgage loan to this date. While servicing the Giottas' mortgage loan, Ocwen Servicing has assessed and charged the Giottas for numerous marked-up Distressed Mortgage Fees. On June 27, 2014, Ocwen Servicing charged the Giottas for eight separate property inspections procured through Altisource Servicing or through the Altisource Parent's software, six costing \$10.50, and two costing \$15.00.⁵¹ The fees for the property inspections charged to the Giottas were excessive. They were unnecessarily and unreasonably inflated due to Ocwen's use of Altisource Servicing or the Altisource Parent's software to procure the property inspection services.

82. On August 26, 2013, Ocwen Servicing charged the Giottas a \$10.50 "Property Inspection Fee," followed closely on September 4, 2013 by a \$100.00 "Property Valuation Expense."⁵² Both the property inspection and property valuation were procured through Altisource Servicing, or through the use of the Altisource Parent's software. Although Ocwen Servicing never defines what a "Property Valuation Expense" is, based on the name and amount charged it appears to be another name for a BPO. Both services cannot be necessary since Ocwen Servicing defines a BPO as including a determination of the condition of the home, which is what Ocwen Servicing defines a property inspection to be. Even if necessary, the fees for both the property inspection and BPO were unnecessarily and unreasonably inflated due to Ocwen Servicing's use of Altisource Servicing or the Altisource Parent's software to procure the property inspection and BPO services.

83. Ocwen Servicing similarly charged \$13.25 for a "Property Inspection" on November 28, 2014, and six days later on December 4, 2014 charged \$100 for a "Property Valuation Expense."⁵³ Both the property inspection and the BPO were procured by Altisource Servicing, or through the use

⁵¹ See Mortgage Account Statement for Victor P. Giotta and Lorelee Giotta dated June 30, 2014 attached hereto as Exhibit 10.

⁵² See Account Statement for Victor P. Giotta and Lorelee Giotta dated September 5, 2013 attached hereto as Exhibit 11.

⁵³ See Mortgage Account Statement for Victor P. Giotta and Lorelee Giotta dated December 16, 2014 attached hereto as Exhibit 12.

1 of the Altisource Parent's software. Both services cannot be necessary since Ocwen Servicing defines
2 a BPO as including a determination of the condition of the home, which is what Ocwen Servicing
3 defines a property inspection to be. To the extent both the property inspection and BPO were
4 necessary, both the property inspection and the BPO were unnecessarily and unreasonably inflated
5 due to Ocwen Servicing's use of Altisource Servicing or the Altisource Parent's software to procure
6 the property inspection and BPO services.

7 84. The Giottas were charged additional inflated Distressed Mortgage Fees for other
8 default related services procured by Ocwen Servicing through Altisource Servicing or through the use
9 of the Altisource Parent's software, including for services for property inspections, BPOs and other
10 Distressed Mortgage Services as displayed by the Giottas' monthly billing statements attached to this
11 Complaint.⁵⁴

12 85. As of the date of this Complaint, the Giottas have been unable to locate all of their
13 billing statements from Ocwen Servicing. Accordingly, the Giottas may have been charged additional
14 excessive Distressed Mortgage Fees for default related services procured by Ocwen Servicing through
15 Altisource Servicing or through the use of the Altisource Parent's software, the proof of which are
16 shown in records currently in Ocwen Servicing's and/or other Defendants' possession. To the extent
17 Ocwen charged the Giottas any such additional excessive Distressed Mortgage Fees, they are part of
18 the claims asserted in this action.

19 86. Plaintiffs are not asserting any breach of contract claims. Plaintiffs are not required to
20 allege a contractual breach in order to assert claims under RICO, California's UCL, for fraud, or for
21 violation of federal and state debt collection acts. In this amended complaint, Plaintiffs allege that
22 Defendants breached various statutory and common law duties, and that these duties exist
23 independently of Defendants' contractual obligations.

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28 ⁵⁴ See Mortgage Account Statements of Victor P. Giotta and Lorelee Giotta, attached hereto collectively as Exhibit 13.

G. Plaintiffs' and the Classes' Claims are Tolloed by Operation of the Discovery Rule and Doctrine of Concealment

87. Plaintiffs and members of the classes alleged herein did not know, and had no reason to suspect, that the Ocwen Enterprise had charged and was charging excessive rates for Distressed Mortgage Services until, at the very earliest, the New York State Department of Financial Services published its letters regarding its investigation of the Ocwen Entities, the first of which is dated February 26, 2014 as described in this Complaint.

88. Ocwen Servicing, as a servicer of Plaintiffs' and class members' loans, had a continuing duty to disclose to Plaintiffs and other borrowers the true costs and nature of the fees assessed for services provided for their mortgage loans. As explained above, Ocwen Servicing misrepresented and actively concealed that its Distressed Mortgage Fees were improperly inflated through the use of Altisource Servicing and the Altisource Parent's mortgage servicing software. Moreover, there was no public information disclosing Ocwen Servicing's up-charging of fees through the use of Altisource Servicing and the Altisource Parent's mortgage servicing software prior to the New York State Department of Financial Services' letters.

89. Plaintiffs, like all other borrowers whose loans are being serviced by Ocwen Servicing, did not know, nor did they have reason to know, that Ocwen Servicing was not entitled to collect the amounts Ocwen Servicing charged to borrowers for Distressed Mortgage Services. Neither Ocwen Servicing, any other member of the Ocwen Enterprise nor the holder of Plaintiffs' and other class members' loans disclosed to Plaintiffs, borrowers or the general public that Ocwen Servicing was up-charging for Distressed Mortgage Services. Nor did Plaintiffs or other borrowers with loans being serviced by Ocwen Servicing have reason to suspect that they were being charged excessive Distressed Mortgage Fees.

90. Similarly, Plaintiffs, like all other borrowers whose loans are being serviced by Ocwen Servicing, had no reason to suspect that Ocwen Servicing charged them and other borrowers fees for Distressed Mortgage Services that were duplicative of each other. Neither Ocwen Servicing, any other member of the Ocwen Enterprise nor the holder of Plaintiffs' and other class members' loans disclosed to Plaintiffs, borrowers or the general public that Ocwen Servicing was charging for duplicative

1 Distressed Mortgage Services. Nor did Plaintiffs or other borrowers with loans being serviced by
2 Ocwen Servicing have reason to suspect that they were being charged fees for duplicative Distressed
3 Mortgage Services.

4 91. Ocwen Servicing misrepresented that the Distressed Mortgage Services being charged
5 to Plaintiffs, Ocwen borrowers and the general public were being provided by a disinterested third-
6 party, and that the charges for said Distressed Mortgage Services were negotiated at arms-length.
7 Ocwen's letters, notices and statements to Plaintiffs and other persons with mortgages serviced by
8 Ocwen portrayed, and therefore represented to them, that Ocwen is permitted to charge fees for certain
9 expenses, and that such charges are lawful.⁵⁵ Neither Ocwen Servicing, nor any other member of the
10 Ocwen Enterprise, disclosed that Altisource was not a disinterested third-party, or that its charges for
11 Distressed Mortgage Services were not negotiated with Ocwen at arms-length. Nor did Plaintiffs or
12 other borrowers with loans being serviced by Ocwen Servicing have reason to suspect that they were
13 being charged for fees for services provided by a non-disinterested third-party, and that the charges
14 assessed were not negotiated at arms-length.

15 92. Similarly, Ocwen's fee statements constitute affirmative misrepresentations that the
16 fees being charged are reasonable and for legitimate services. In fact, the borrower is being charged
17 fees that (1) are inflated, and (2) are for redundant and duplicative services.

18 93. Defendants' misrepresentations, acts and omissions described herein – including
19 assessing, charging and collecting up-charged Distressed Mortgage Fees, holding out such fees as
20 being the actual costs for such services chargeable to borrowers, or representing that such fees were
21 for legitimate services – actually deceived or were likely to deceive borrowers into thinking that
22 Ocwen Servicing could lawfully collect the amounts it charged for Distressed Mortgage Services. For
23 example, when Ocwen Servicing first acquired the servicing right to Plaintiffs' mortgage it provided
24 them with a "Welcome to Ocwen Loan Servicing, LLC" letter describing the legal basis for their
25 acquisition of the servicing rights of Plaintiffs' loan, and a schedule of the types of fees (and their
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27 ⁵⁵ See, e.g., Exhibit 8.
28

costs) for certain services, including some Distressed Mortgage Services.⁵⁶ This statement and others suggests to borrowers that the services and any associated fees charged by Ocwen Servicing would be lawful.

94. Plaintiffs and Class Members relied on Defendants' misrepresentations, omissions and concealment in paying the Distressed Mortgage Fees as described herein that had the effect of misrepresenting and portraying the Default-Related Services Fees charges memorialized in Ocwen Servicing's uniform billing statements as lawful, reasonable and necessary, which they were not. Class Members' reliance may also be presumed or inferred from the very nature of the omissions, concealment, misrepresentations and conduct of the Defendants presented in this action.

95. By virtue of Ocwen Servicing's misrepresentations and active concealment, any otherwise applicable statutes of limitations for Plaintiffs and class members are tolled by the discovery rule, concealment doctrine and/or other equitable tolling from the first unlawful charging of Distressed Mortgage Fees until – at the earliest – the publication of the New York State Department of Financial Services' letters concerning its investigation of the Ocwen Enterprise's practices described herein on February 26, 2014.

VI. CIVIL CONSPIRACY AND AIDING AND ABETTING

96. Members of the Ocwen Enterprise entered into a civil conspiracy, and each is jointly and severally liable for the actions of the other co-conspirators as if they committed the acts themselves as described in detail in paragraphs 39-51, *supra*.

97. As alleged herein and described above, members of the Ocwen Enterprise formed and operated a conspiracy to charge Plaintiffs and borrowers with mortgages serviced by Ocwen Servicing for inflated and duplicative Distressed Mortgage Fees. *See* paragraphs 67-80, *supra*.

98. Plaintiffs and borrowers with loans serviced by Ocwen Servicing were charged and paid inflated and duplicative Distressed Mortgage Fees. The Ocwen Enterprise's charging Plaintiffs and borrowers for Inflated and Duplicative Distressed Mortgage Fees was intended to affect Plaintiffs and other borrowers whose loans were serviced by Ocwen Servicing.

⁵⁶ *See* Exhibit 14.

1 99. Plaintiffs and borrowers with loans serviced by Ocwen Servicing were damaged by
 2 paying for inflated and duplicative Distressed Mortgage Fees which were charged by the acts of the
 3 Ocwen Enterprise. Defendants could foresee that any harm caused by charging for inflated or
 4 duplicative services would harm Plaintiffs and borrowers with loans serviced by Ocwen Servicing,
 5 and they had a duty to disclose this information to Plaintiffs and other borrowers whose loans were
 6 serviced by Ocwen Servicing.

7 100. Plaintiffs' and other borrowers' damages from being charged and paying for Inflated
 8 and Duplicative Distressed Mortgage Fees was proximately caused by each member of the undisclosed
 9 self-dealing Ocwen Enterprise, and their conduct in forming the conspiratorial enterprise alleged
 10 herein, misrepresenting the nature of the Distressed Mortgage Fees, and failing to disclose that the
 11 Distressed Mortgage Fees at issue were inflated or duplicative of other services.

12 101. Members of the Ocwen Enterprise that did not charge Plaintiffs and class members for
 13 their Distressed Mortgage Fees aided and abetted Ocwen Servicing, the company that directly charged
 14 for inflated and duplicative Distressed Mortgage Fees, and collected money from Plaintiffs and class
 15 members for inflated and duplicative Distressed Mortgage Fees by their collective conduct described
 16 herein.

17 102. Each member of the Ocwen Enterprise knew that Ocwen Servicing had a duty to
 18 Plaintiffs, class and subclass members not to charge inflated or duplicative Distressed Mortgage Fees.

19 103. Each member of the Ocwen Enterprise gave substantial assistance and encouragement
 20 to Ocwen Servicing to charge Plaintiffs and class members for inflated and duplicative Distressed
 21 Mortgage Fees in their collective actions as described throughout this First Amended Complaint.

22 104. Each member of the Ocwen Enterprise assisted and encouraged Ocwen Servicing for
 23 their own financial advantage, and each member of the Ocwen Enterprise benefitted from borrowers
 24 paying for inflated and duplicative Distressed Mortgage Fees.

25 **VII. CLASS ACTION ALLEGATIONS**

26 105. This action asserts claims on behalf of a nationwide class, a nationwide subclass, and
 27 a California subclass pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), (b)(3), and
 28

(c)(4), which class and subclasses consist of persons who paid for unlawfully inflated (including duplicative) Distressed Mortgage Fees, as follows:

All persons in the United States who had or have a mortgage loan serviced by Ocwen Servicing on or after August 10, 2009, and were assessed one or more of the Distressed Mortgage Fees by Ocwen Servicing (the “National Distressed Mortgage Fee Class”).

All persons in the United States who had or have a mortgage loan serviced by Ocwen Servicing on or after August 10, 2009, for which the servicing rights were transferred to Ocwen Servicing when the loan was already in default, and were assessed one or more of the Distressed Mortgage Fees (the “National FDCPA Distressed Mortgage Fee Subclass”).

All persons who have or had a mortgage loan on a property located in California serviced by Ocwen Servicing on or after August 10, 2009, and were assessed one or more of the Distressed Mortgage Fees (the “California Distressed Mortgage Fee Subclass”).

106. Excluded from each of the class and subclasses are: (i) Ocwen Financial Corporation, Ocwen Loan Servicing, LLC, Altisource Portfolio Solutions, S.A., and Altisource Solutions, Inc. and their employees, principals, affiliated entities, legal representatives, successors and assigns; (ii) William C. Erbey; (iii) the judges to whom this action is assigned and any members of their immediate families.

107. There are thousands of members in each of the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass, and California Distressed Mortgage Fee Subclass who are geographically dispersed throughout California and the United States. Therefore, individual joinder of the members of any of the classes defined above would be impracticable.

108. Common questions of law or fact exist as to all members of the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass and California Distressed Mortgage Fee Subclass. These common legal or factual questions include:

- a. Whether Ocwen Servicing’s Distressed Mortgage Fees as described herein were lawful.
- b. Whether Ocwen Servicing’s Distressed Mortgage Fees as described herein were unfair.
- c. Whether Ocwen Servicing’s effort to collect inflated or duplicative Distressed Mortgage Fees were unfair attempts to collect a debt.
- d. Whether the Ocwen Entities, the Altisource Entities and Erbey were members of, or participants in, the conspiracy alleged herein.
- e. Whether the Ocwen Entities, the Altisource Entities and Erbey engaged in a pattern or practice of racketeering, as alleged herein.

- f. Whether Ocwen Servicing charged excessive Distressed Mortgage Fees.
- g. Whether the Distressed Mortgage Fees Ocwen Servicing charged were excessive as a result of the Ocwen Enterprise.
- h. Whether Ocwen Servicing's Distressed Mortgage Fees were unconscionable;
- i. Whether Ocwen Servicing's use of Altisource Servicing and/or the Altisource Parent's software resulted in excessive Distressed Mortgage Fees.
- j. Whether Ocwen Servicing is a "debt collector" as defined by the FDCPA.
- k. Whether the Distressed Mortgage Fees added to Plaintiffs loan balances as described herein constitute "debt" within the meaning of the FDCPA.
- l. Whether Ocwen Servicing up-charged borrowers by charging them for Distressed Mortgage Services that duplicate services already provided and charged for.
- m. Whether Ocwen Servicing charged borrowers for Distressed Mortgage Services that were duplicative of other Distressed Mortgage Services Ocwen Servicing already charged for.
- n. Whether the Ocwen Entities, the Altisource Entities or Erbey aided or abetted any of the other Defendants in this misconduct alleged herein.

109. Plaintiffs' claims are typical of the claims of the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass and California Distressed Mortgage Fee Subclass. Ocwen Servicing charged Plaintiffs excessive fees for property inspections, BPOs and other Distressed Mortgage Services procured from Altisource Servicing or through the use of the Altisource Parent's software than were unlawful, inflated, excessive and/or duplicative. Plaintiffs' loan was also in default at the time Ocwen Servicing obtained its servicing rights. Plaintiffs are also California residents. Therefore, Plaintiffs are no different in any material respect from any other members of the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass, or California Distressed Mortgage Fee Subclass, and the relief sought by Plaintiffs is common to the relief sought by the class and subclasses.

110. Plaintiffs are adequate representatives of the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass, and California Distressed Mortgage Fee Subclass because their interests do not conflict with the interests of the class or subclasses members they seek to represent, and they have retained counsel competent and experienced in conducting complex

lending and class action litigation. Plaintiffs and their counsel will adequately protect the interests of the class and subclasses.

111. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual member of the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass, and California Distressed Mortgage Fee Subclass are relatively small, while the burden and monetary expense needed to individually prosecute this case against Defendants is substantial. Thus, it would be virtually impossible for class and subclass members individually to redress effectively the wrongs done to them. Moreover, even if members of the class and subclasses defined herein could afford individual actions, a multitude of such individual actions still would not be preferable to class wide litigation. Individual actions also present the potential for inconsistent or contradictory judgments, which would be dispositive of at least some of the issues and hence interests of the other members not party to the individual actions, would substantially impair or impede their ability to protect their interests, and would establish incompatible standards of conduct for the party opposing the class.

112. By contrast, a class action presents far fewer litigation management difficulties, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Also, or in the alternative, the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass, and California Distressed Mortgage Fee Subclass may be certified because Defendants have acted or refused to act on grounds generally applicable to each of the respective class and subclasses, thereby making preliminary and final declaratory relief appropriate.

113. Further, in the alternative, the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass and California Distressed Mortgage Fee Subclass may be maintained as class actions with respect to particular issues, pursuant to Fed.R.Civ.P. 23(c)(4).

114. All records concerning each of the loans Ocwen Servicing services, including records showing Distressed Mortgage Fees charged to borrowers are in the possession and control of Defendants and their agents and are available through discovery. For instance, Ocwen Financial “regularly undertakes its own internal analyses to benchmark its performance” which includes “accurate loan servicer information...which properly indicates the loans Ocwen does and does not

1 service, and which loans Ocwen serviced at what time.”⁵⁷ Ocwen Financial also possesses investor
 2 reports detailing recovery and remittance data sufficient to explain and justify expenses such as the
 3 Distressed Mortgage Fees at the individual loan level. *Id.* pp. 17-18.

4 **VIII. CLAIMS FOR RELIEF**

5 **FIRST CAUSE OF ACTION** 6 **Violations of RICO (18 U.S.C. §§ 1962(c) and (d)) (on Behalf of the National Distressed** 7 **Mortgage Fees Class against All Defendants)**

8 115. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
 9 them as if they were fully written herein.

10 116. Plaintiffs bring this cause of action on behalf of themselves and the members of the
 11 National Distressed Mortgage Fees Class.

12 117. As described throughout this First Amended Complaint, Erbey and the Ocwen and
 13 Altisource Entities devised a scheme to defraud borrowers by charging them for Distressed Mortgage
 14 Fees that were inflated and/or duplicative by virtue of Defendants’ undisclosed, unlawful and
 15 fraudulent self-dealing. In furtherance of this scheme, Defendants used the mail and wires on
 16 numerous occasions to exchange fraudulent communications facilitating the ordering of, the charging
 17 and payment for, and the ultimate billing to borrowers for the Distressed Mortgage Fees that were
 18 inflated and/or duplicative by virtue of Defendants’ undisclosed, unlawful and fraudulent self-dealing.
 19 Each such use of the mail or wires constituted mail or wire fraud, and together they constituted a
 20 pattern of racketeering activity. The Ocwen Enterprise conducted its affairs through this pattern of
 21 racketeering activity. As a result, Plaintiffs and members of the National Distressed Mortgage Fees
 22 Class paid for Distressed Mortgage Fees that were inflated and/or duplicative by virtue of Defendants’
 23 undisclosed, unlawful and fraudulent self-dealing and were thereby injured in their business or
 24 property.

25 118. Each Defendant is a person within the meaning of 18 U.S.C. § 1961(3).
 26

27 ⁵⁷ Exhibit 15, March 22, 2015 Letter from Timothy M. Hays, Ocwen Financial’s Executive Vice
 28 President and General Counsel, re Ocwen Response to January 23, 2015 Notice Pertaining to 119
 Residential Mortgage Backed Securities Trusts, p. 8.

1 119. The Ocwen Entities, through their directors, employees and agents, the Altisource
2 Entities through their directors, employees and agents, and William C. Erbey conducted the affairs of
3 an associated-in-fact enterprise as defined in 18 U.S.C. § 1961(4) (the “Enterprise”). The affairs of
4 the Enterprise affected interstate commerce through a pattern of racketeering activity.

5 120. The Enterprise is an ongoing, continuing group or unit of persons and entities
6 associated together for the common purpose of charging, assessing, and collecting the Distressed
7 Mortgage Fees.

8 121. While the members of the Enterprise participate in and are part of the Enterprise, they
9 also have an existence separate and distinct from the Enterprise. The Enterprise has a systematic
10 linkage due to contractual relationships, agreements, financial ties and coordinated activities between
11 the Ocwen and Altisource Entities and Erbey.

12 122. Ocwen Financial controls and directs the affairs of the Enterprise according to policies
13 and procedures developed and established by Ocwen Financial’s executives – formerly (and until
14 January 16, 2015) including Mr. Erbey.

15 123. As described throughout this Complaint, the policies and procedures established by
16 Ocwen Servicing at the direction of Erbey through his control of Ocwen Financial and the Altisource
17 Entities and in furtherance of the Enterprise include: (i) procuring Distressed Mortgage Services
18 through Altisource Servicing; (ii) leasing from the Altisource Parent software Ocwen Financial
19 developed to program and which did program Ocwen Servicing’s loan servicing systems to order,
20 assess, charge and collect Inflated Distressed Mortgage Fees when borrowers are not current on their
21 mortgage loan; (iii) charging borrowers more for Inflated Distressed Mortgage Services than what
22 Ocwen Servicing or Altisource Servicing actually pays the service providers, and, at the very least,
23 more than what is reasonable in the marketplace; (iv) charging borrowers for Distressed Mortgage
24 Services that duplicate services already provided and charged for; and (v) providing statements to
25 borrowers that conceal the nature of the Inflated and Duplicative Distressed Mortgage Fees or the true
26 cost thereof.

A. Violation of 18 U.S.C. § 1962(c)

124. Under the mortgage servicing rights that Ocwen Servicing acquires, Ocwen Servicing is authorized to assess reasonable and appropriate fees and charges as provided for in the mortgage agreement. Whether or not they are contractually authorized to assess any or all of the fees at issue in this action, they cannot charge or collect fees that are unlawful, unfair or the product of a self-dealing fraudulent conspiracy under federal or state laws.

125. The process of ordering, assessing and charging for Distressed Mortgage Fees is done automatically by Ocwen Servicing's loan servicing systems based on the programming and parameters established by Ocwen Servicing and other members of the Ocwen Enterprise.

126. By developing and implementing policies and procedures leading to borrowers being charged for Distressed Mortgage Fees, the Ocwen and Altisource Entities and Erbey engaged in the conduct of the Enterprise distinct from any of their own affairs in their other business arrangements and inconsistent with their normal business or the guidelines under which each is obligated to operate.

127. The Enterprise's systematic scheme of ordering, assessing and charging for Distressed Mortgage Fees, as described throughout this Complaint, was facilitated by the use of the United States Mail and wire. The Ocwen Enterprise's scheme constitutes "racketeering activity" within the meaning of 18 U.S.C. § 1961(l), as acts of mail and wire fraud, under 18 U.S.C. §§ 1341 and 1343.

128. In violation of 18 U.S.C. §§ 1341 and 1343, the Ocwen Enterprise utilized the mail and wire in furtherance of their scheme to defraud borrowers whose loans are serviced by Ocwen Servicing by obtaining money from borrowers using false or fraudulent pretenses.

129. Through the mail and wire, the Ocwen Enterprise provided invoices, statements, payoff demands, or proofs of claims to borrowers, and demanded that borrowers pay fees for Distressed Mortgage Fees. Also through the mail and wire, the Enterprise communicated orders for Distressed Mortgage Services and exchanged money in the form of Distressed Mortgage Fees, including through the use of Altisource's mortgage servicing software. The Ocwen Enterprise also used the mail and wire to accept payments and engage in other correspondence in furtherance of its scheme.

1 130. The Ocwen Enterprise fraudulently and unlawfully assessed Distressed Mortgage Fees
2 because the servicers were inflated and/or duplicative, and were contrary to the disclosures made to
3 borrowers.

4 131. The invoices, statements, or proofs of claims provided by Ocwen Servicing to
5 borrowers disguised the fact that the Distressed Mortgage Fees – such as BPO fees, property inspection
6 fees, auction fees and title fees assessed on borrowers' accounts – were up-charged, and
7 misrepresented that the fees were charges for legitimate services, when in fact the borrower was being
8 charged for servicers that provided no benefit to either the borrower or lender and were solely imposed
9 to enrich the Ocwen Enterprise. By disguising the true nature and basis of the Distressed Mortgage
10 Fees purportedly owed in communications to borrowers, the Enterprise made false statements using
11 the Internet, telephone, facsimile, United States Mail, and other interstate commercial carriers. These
12 false statements were uniform and consistent in that they failed to disclose the Ocwen Enterprise's
13 unlawful conspiracy, or that the Distressed Mortgage Fees were inflated or duplicative of other
14 services.

15 132. These omissions were material to Plaintiffs and the members of the National Distressed
16 Mortgage Fee Class. Had the Enterprise accurately represented the nature of the fees being charged,
17 or other unlawful activities described herein, Plaintiffs would have been aware and would have
18 challenged Ocwen Servicing's unlawful practices or they would not have paid the Distressed Mortgage
19 Fees.

20 133. Each of these acts constituted an act of mail fraud for purposes of 18 U.S.C. § 1341.

21 134. Additionally, using the Internet, telephone, and facsimile transmissions to fraudulently
22 communicate false information to borrowers, to pursue and achieve their fraudulent scheme, the
23 Enterprise engaged in repeated acts of wire fraud in violation of 18 U.S.C. § 1343.

24 135. The Enterprise's knowledge that its activities were fraudulent and unlawful is
25 evidenced by, among other things, the fact that they did not disclose the nature of the Distressed
26 Mortgage Fees or their actions in their communications to borrowers.

1 136. The predicate acts specified above constitute a “pattern of racketeering activity” within
2 the meaning of 18 U.S.C. § 1961(5) in which the Ocwen Enterprise has engaged under 18 U.S.C. §
3 1962(c).

4 137. All of the predicate acts of racketeering activity described herein are part of the nexus
5 of the affairs and functions of the racketeering Enterprise. The racketeering acts committed by the
6 Enterprise employed a similar method, were related, with a similar purpose, and involved similar
7 participants, with a similar impact on the members of the National Distressed Mortgage Fees Class.
8 Because this case is brought on behalf of a class of similarly situated borrowers described above, and
9 there are numerous acts of mail and wire fraud that were used to carry out the scheme, it would be
10 impracticable for Plaintiffs to plead all of the details of the scheme with particularity. Plaintiffs cannot
11 plead the precise dates of all of the Enterprise’s uses of the mail and wire because this information
12 cannot be alleged without access to Defendants’ records.

13 138. The pattern of racketeering activity is currently ongoing and open-ended, and threatens
14 to continue indefinitely unless this Court enjoins the racketeering activity.

15 139. Numerous schemes have been completed involving repeated unlawful conduct that by
16 its nature, projects into the future with a threat of repetition.

17 140. As a direct and proximate result of these violations of 18 U.S.C. §§ 1962(c) and (d),
18 Plaintiffs and members of the National Distressed Mortgage Fees Class have suffered substantial
19 damages. Members of the Enterprise are liable to Plaintiffs and the Class for treble damages, together
20 with all costs of this action, plus reasonable attorney’s fees, as provided under 18 U.S.C. § 1964(c).

21 **B. Violation of 18 U.S.C. § 1962(d)**

22 141. As set forth above in Subpart A to this First Cause of Action, in violation of 18 U.S.C.
23 § 1962(d), Defendants conspired to violate the provisions of 18 U.S.C. § 1962(c) by charging
24 borrowers for Distressed Mortgage Fees.

25 142. As set forth above in Subpart A to this First Cause of Action, Defendants were aware
26 of the nature and scope of the Enterprise’s unlawful scheme, and they agreed to participate in it.

27 143. As a direct and proximate result, Plaintiffs and members of the National Distressed
28 Mortgage Fees Class have been injured in their business or property by the predicate acts which make

up the Ocwen Enterprise's patterns of racketeering activity in that Distressed Mortgage Fees were assessed on their mortgage accounts.

144. As a direct and proximate result of these violations of 18 U.S.C. §§ 1962(c) and (d), Plaintiffs and members of the National Distressed Mortgage Fees Class have suffered substantial damages. Members of the Enterprise are liable to Plaintiffs and the Class for treble damages, together with all costs of this action, plus reasonable attorney's fees, as provided under 18 U.S.C. § 1964(c).

SECOND CAUSE OF ACTION
Violation of the FDCPA (15 U.S.C. §§ 1692, *et seq*) (on behalf of Plaintiffs and the FDCPA
Distressed Mortgage Fees Subclass against All Defendants)

145. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate them as if they were fully written herein.

146. Plaintiffs bring this cause of action on behalf of themselves and the members of the FDPCA Distressed Mortgage Fee Subclass.

147. The FDCPA defines "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which are the subject of the transaction or primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."

148. The FDCPA defines "debt collector" as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6).

149. Ocwen Servicing is a "debt collector" under the FDCPA for all loans it services for which it obtained the servicing rights when the loan was in default, as it uses interstate commerce and the mails to regularly collect debts owed or due or asserted to be owed or due by mortgage borrowers.

150. Plaintiffs' mortgage loan was in default when Ocwen Servicing obtained the servicing rights for Plaintiffs' loan.

151. A borrower's obligation to pay the charges, fees, principal and interest on a mortgage loan is a "debt" as defined by the FDCPA because it arises out of the agreement between homeowners

1 and their lenders and obliges the homeowners to pay money arising out of the loan given to purchase
2 their home.

3 152. The FDCPA prohibits a debt collector from using “any false, deceptive, or misleading
4 representation or means in connection with the collection of any debt” (15 U.S.C. § 1692e).

5 153. In violation of 15 U.S.C. § 1692e(10), Ocwen Servicing uses false misrepresentations
6 and deceptive means to collect or attempt to collect a debt by charging borrowers for inflated
7 (including duplicative) Distressed Mortgage Fees because Ocwen Servicing knowingly, affirmatively,
8 and actively concealed and suppressed material facts, namely the fact that Ocwen Servicing inflated
9 its Distressed Mortgage Fees and charged for duplicative Distressed Mortgage Services, in violation
10 of the law and the servicing guidelines which Ocwen Servicing is obligated to follow.

11 154. Contrary to Ocwen Servicing’s communications, it was not legally authorized to assess,
12 charge or collect inflated or duplicative Distressed Mortgage Fees. Under the mortgage servicing
13 rights that Ocwen Servicing acquires, Ocwen Servicing is authorized to assess reasonable and
14 appropriate fees and charges as provided for in the mortgage agreement. Whether or not they are
15 contractually authorized to assess any or all of the fees at issue in this action, they cannot charge or
16 collect fees that are unlawful, unfair or the product of a self-dealing fraudulent conspiracy under
17 federal or state laws.

18 155. As a result of Ocwen Servicing’s violations of the FDCPA, Plaintiffs and the FDPCA
19 Distressed Mortgage Fee Subclass members are entitled to their actual damages pursuant to 15 U.S.C.
20 § 1692k(a)(1); statutory damages for Plaintiffs in an amount up to \$1,000.00 pursuant to 15 U.S.C. §
21 1692k(a)(2)(A); class damages for FDPCA Distressed Mortgage Fee Subclass members that are not
22 entitled to actual damages up to the lesser of \$500,000 or 1 per centum of the net worth of Ocwen
23 Servicing pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii); and reasonable attorneys’ fees and costs
24 pursuant to 15 U.S.C. 1692k(a)(3) from Ocwen Servicing.

25 156. Ocwen Financial, Altisource and Erbey willfully conspired with Ocwen Servicing to
26 violate the FDCPA, and aided and abetted Ocwen Servicing in its violations of the FDCPA by
27 providing agreeing to assist and assisting Ocwen Servicing in its conduct which violates the FDCPA,
28

1 and are jointly and severally liable to Plaintiffs and members of the FDPCA Distressed Mortgage Fee
2 Subclass for Ocwen Servicing's violations of the FDCPA.

3 **THIRD CAUSE OF ACTION**
4 **Violations of the Rosenthal Fair Debt Collection Practices Act (RFDCPA) (Cal. Civ. Code §§**
5 **1788, *et seq* (on behalf of Plaintiffs and the California Distressed Mortgage Fee Subclass**
6 **against All Defendants)**

7 157. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
8 them as if they were fully written herein.

9 158. Plaintiffs bring this cause of action on behalf of themselves and the members of the
10 California Distressed Mortgage Fee Subclass.

11 159. As alleged above, Ocwen Servicing committed violations of the Rosenthal Fair Debt
12 Collection Practices Act, California Civil Code §§ 1788, *et seq.* ("RFDCPA"), which incorporates by
13 reference, and requires compliance with, the provisions of the federal FDCPA, 15 U.S.C. § 1692.

14 160. Ocwen Servicing is a "debt collector" within the meaning of California Civil Code §
15 1788.2(c) because Ocwen Servicing sent mortgage bills to Plaintiffs and members of the California
16 Distressed Mortgage Fee Subclass, and Plaintiffs and members of the California Distressed Mortgage
17 Fee Subclass made their mortgage payments to Ocwen Servicing, Ocwen Servicing accepted those
18 payments, and Ocwen Servicing made demands for payment which included payments for up-charged
19 Inflated Distressed Mortgage Fees. Ocwen Servicing made demand for such payment by sending
20 letters, making telephone calls, and through other attempts to collect mortgage payments and fees.

21 161. The FDCPA and RFDCPA prohibit a debt collector from using "any false, deceptive,
22 or misleading representation or means in connection with the collection of any debt." 15 U.S.C. §
23 1692e.

24 162. The inflated and duplicative Distressed Mortgage Fees purportedly owed by Plaintiffs
25 and members of the California Distressed Mortgage Fee Subclass are a "debt" within the meaning of
26 California Civil Code § 1788.2(d), because they are "money, property or their equivalent which [are]
27 due or owing or alleged to be due or owing from a natural person to another person."

28 163. Ocwen Servicing knowingly, affirmatively, and actively concealed and suppressed
material facts, namely the fact that the Distressed Mortgage Fees were inflated and/or duplicative as

1 alleged throughout this Complaint, in violation of the law and the servicing guidelines which Ocwen
2 Servicing is obligated to follow.

3 164. Contrary to Ocwen Servicing's communications, it was not legally authorized to asses,
4 charge or collect inflated or duplicative Distressed Mortgage Fees. Under the mortgage servicing
5 rights that Ocwen Servicing acquires, Ocwen Servicing is authorized to assess reasonable and
6 appropriate fees and charges as provided for in the mortgage agreement. Whether or not they are
7 contractually authorized to assess any or all of the fees at issue in this action, they cannot charge or
8 collect fees that are unlawful, unfair or the product of a self-dealing fraudulent conspiracy under
9 federal or state laws.

10 165. Pursuant to California Civil Code §§ 1788.17 and 1788.30, Plaintiffs and members of
11 the California Distressed Mortgage Fee Subclass are entitled to recover actual damages sustained as a
12 result of Ocwen Servicing's violations of the RFDCPA. Such damages include, without limitation,
13 monetary losses and damages. Additionally, because Ocwen Servicing's violations of the RFDCPA
14 were committed willingly and knowingly, Plaintiffs and members of the California Distressed
15 Mortgage Fee Subclass are entitled to recover penalties of up to \$1,000 per violation as provided for
16 in the RFDCPA, as well as attorneys' fees, costs, and expenses incurred in bringing this action.

17 166. Ocwen Financial, Altisource and Erbey willfully conspired with Ocwen Servicing to
18 violate the FDCPA, and aided and abetted Ocwen Servicing in its violations of the RFDCPA by
19 providing agreeing to assist and assisting Ocwen Servicing in its conduct which violates the RFDCPA,
20 and are jointly and severally liable to Plaintiffs and members of the California Distressed Mortgage
21 Fee Subclass for Ocwen Servicing's violations of the RFDCPA.

22 **FOURTH CAUSE OF ACTION**
23 **Violation of the "Unlawful" prong of the UCL (Bus. & Prof. Code §§ 17200, *et seq.*)(on behalf**
24 **of Plaintiffs and the California Distressed Mortgage Fee Subclass against All Defendants)**

25 167. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
26 them as if they were fully written herein.

27 168. Plaintiffs bring this cause of action on behalf of themselves and the members of the
28 California Distressed Mortgage Fee Subclass.

1 169. The Unfair Competition Law (“UCL”), California Business and Professions Code §§
2 17200, *et seq.*, defines unfair business competition to include any “unlawful, unfair or fraudulent” act
3 or practice.

4 170. A business act or practice is “unlawful” if it violates any established state or federal
5 law.

6 171. Defendants have and continue to violate the “unlawful” prong of the UCL by engaging
7 in the conspiratorial conduct described above to charge borrowers for inflated and duplicative
8 Distressed Mortgage Fees, and thereby attempting to collect a debt not owed, in violation of Title 18
9 U.S.C. §§ 1341, 1343, and 1962, 15 U.S.C. §§ 1601 *et seq.*, and California’s Rosenthal Fair Debt
10 Collection Practices Act.

11 172. The Ocwen Entities are also subject to the laws and regulations established by the
12 Consumer Financial Protection Board (“CFPB”) pursuant to the Dodd-Frank Wall Street Reform and
13 Consumer Protection Act, 12 U.S.C. §§ 5301, *et seq.*

14 173. Ocwen Financial and Ocwen Servicing are covered entities under the Dodd-Frank Act.
15 12 U.S.C. 5481(6)(A). The Altisource Entities are service providers to the Ocwen Entities, and are
16 therefore also covered entities under the Dodd-Frank Act. 12 U.S.C. 5481(6)(B).

17 174. The Dodd-Frank Act prohibits any covered person or service provider, “from
18 committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in
19 connection with any transaction with a consumer for a consumer financial product or service.” 12
20 U.S.C. § 5531(a).

21 175. Defendants have and continue to violate the “unlawful” prong of the UCL by, amongst
22 other things, engaging in unfair, deceptive and abusive acts and practices declared unlawful by the
23 Dodd-Frank Act by charging and collecting for inflated and duplicative Distressed Mortgage Fees. 12
24 U.S.C. § 5536(a)(1)(B).

25 176. Ocwen Financial, Altisource and Erbey knowingly or recklessly provided substantial
26 assistance to Ocwen Servicing by virtue of their action as part of the Ocwen Enterprise as described
27 herein in charging and collecting for inflated and duplicative Distressed Mortgage Fees, and are
28

1 deemed in violation of the Dodd-Frank Act, and California's "unlawful" prong of the UCL, to the
2 same extent as Ocwen Servicing to whom they provided assistance. 12 U.S.C. § 5536(a)(3).

3 177. Under the mortgage servicing rights that Ocwen Servicing acquires, Ocwen Servicing
4 is authorized to assess reasonable and appropriate fees and charges as provided for in the mortgage
5 agreement. Whether or not they are contractually authorized to assess any or all of the fees at issue in
6 this action, they cannot charge or collect fees that are unlawful, unfair or the product of a self-dealing
7 fraudulent conspiracy under federal or state laws.

8 178. Ocwen Financial, Altisource and Erbey conspired with Ocwen Servicing to violate the
9 UCL, and aided and abetted Ocwen Servicing in its violations of the UCL by providing agreeing to
10 assist and assisting Ocwen Servicing in its conduct which violates the UCL, and are jointly and
11 severally liable to Plaintiffs and members of the California Distressed Mortgage Fee Subclass for
12 Ocwen Servicing's violations of the UCL.

13 179. Through their unlawful acts and practices, Defendants have obtained, and continue to
14 unfairly obtain, money from Plaintiffs and members of the California Distressed Mortgage Fee
15 Subclass. As such, Plaintiffs request on behalf of themselves and all California Distressed Mortgage
16 Fee Subclass members the relief set forth in the Prayer, including that this Court enjoin Defendants
17 from continuing to violate the Unfair Competition Law as discussed herein. Otherwise, the California
18 Distressed Mortgage Fee Subclass may be irreparably harmed and/or denied an effective and complete
19 remedy if such an order is not granted.

20 **FIFTH CAUSE OF ACTION**
21 **Violation of the "Unfair" prong of the UCL (Bus. & Prof. Code §§ 17200, *et seq.*) (on behalf of**
22 **Plaintiffs and the California Distressed Mortgage Fee Subclass against All Defendants)**

23 180. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate
24 them as if they were fully written herein.

25 181. Plaintiffs bring this cause of action on behalf of themselves and the members of the
26 California Distressed Mortgage Fee Subclass.

27 182. The Unfair Competition Law ("UCL"), California Business and Professions Code §§
28 17200, *et seq.*, defines unfair business competition to include any "unlawful, unfair or fraudulent" act
or practice.

1 183. A business act or practice is “unfair” under the UCL if the reasons, justifications and
2 motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

3 184. Defendants’ acts and practices of assessing, charging and collecting inflated and
4 duplicative Distressed Mortgage Fees was “unfair” under both the Dodd-Frank Act, 12 U.S.C. §
5 5531(c), and the UCL. *See also* Paragraph 37, *supra*.

6 185. The gravity of the harm to Plaintiffs and members of the California Distressed
7 Mortgage Fee Subclass resulting from Defendants’ unfair acts and practices outweighs any
8 conceivable reasons, justifications and/or motives of Defendants’ conduct, and any countervailing
9 benefits to consumers or to competition. By committing the acts and practices alleged above,
10 Defendants have engaged, and continue to be engaged, in unfair business practices within the meaning
11 of Cal. Bus. & Prof. Code 17200, *et seq.* and the Dodd-Frank Act.

12 186. As a result of the conduct described above, Defendants have been, and will continue to
13 be, unjustly enriched at the expense of Plaintiffs and members of the proposed California Distressed
14 Mortgage Fee Subclass. Specifically, Defendants have been unjustly enriched by the revenue and
15 profits they have obtained from Plaintiffs and members of the California Distressed Mortgage Fee
16 Subclass for the Duplicative Distressed Mortgage Fees.

17 187. Under the mortgage servicing rights that Ocwen Servicing acquires, Ocwen Servicing
18 is authorized to assess reasonable and appropriate fees and charges as provided for in the mortgage
19 agreement. Whether or not they are contractually authorized to assess any or all of the fees at issue in
20 this action, they cannot charge or collect fees that are unlawful, unfair or the product of a self-dealing
21 fraudulent conspiracy under federal or state laws.

22 188. Ocwen Financial, Altisource and Erbey conspired with Ocwen Servicing to violate the
23 UCL, and aided and abetted Ocwen Servicing in its violations of the UCL by providing agreeing to
24 assist and assisting Ocwen Servicing in its conduct which violates the UCL, and are jointly and
25 severally liable to Plaintiffs and members of the California Distressed Mortgage Fee Subclass for
26 Ocwen Servicing’s violations of the UCL.

27 189. Through their unfair acts and practices, Defendants have improperly obtained, and
28 continue to improperly obtain, money from members of the California Distressed Mortgage Fee

Subclass. As such, Plaintiffs request that this Court cause Defendants to restore this money to Plaintiffs and the California Distressed Mortgage Fee Subclass, to disgorge the profits Defendants have made on Inflated Distressed Mortgage Fees, and to enjoin Defendants from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future as discussed herein. Otherwise, members of the California Distressed Mortgage Fee Subclass may be irreparably harmed and/or denied an effective and complete remedy if such an Order is not granted.

SIXTH CAUSE OF ACTION
Violation of the “Fraudulent” Prong of the UCL (Bus. & Prof. Code §§ 17200, *et seq.*) (on behalf of Plaintiffs and the California Distressed Mortgage Fee Subclass against All Defendants)

190. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate them as if they were fully written herein.

191. Plaintiffs bring this cause of action on behalf of themselves and the members of the California Distressed Mortgage Fee Subclass.

192. The Unfair Competition Law (“UCL”), California Business and Professions Code §§ 17200, *et seq.*, defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice.

193. A business act or practice is “fraudulent” under the UCL if it actually deceives or is likely to deceive members of the consuming public.

194. In the course and conduct of Ocwen Servicing’s loan servicing and collection, Defendants fail to disclose the nature of the inflated or duplicative Distressed Mortgage Fees Ocwen Servicing assesses to and collects from borrowers. Defendants also failed to disclose the nature of the relationship between and among the Ocwen Enterprise, and that all of the inflated (including duplicative) Distressed Mortgage Fees were inflated as a result of their relationships and the manner by which the up-charges were accomplished.

195. In the course and conduct of Ocwen Servicing’s loan servicing and collection, Defendants misrepresented that the services provided and charged to Plaintiffs and members of the Distressed Mortgage Fees class were provided by a dis-interested third-party, and that the charges for such services were negotiated at arms-length.

1 196. Plaintiffs believed they were obligated to pay the amounts specified in Ocwen
2 Servicing's communications, and they and members of the California Distressed Mortgage Fee
3 Subclass were likely to be deceived by Ocwen Servicing's assertions that they were obligated to pay
4 the amounts specified in Ocwen Servicing's communications, for the Distressed Mortgage Fees
5 charged to Plaintiffs and California Distressed Mortgage Fee Subclass members, and that the services
6 provided were provided by a dis-interested third-party and that the charges were negotiated at arms-
7 length. Plaintiffs and members of the California Distressed Mortgage Fee Subclass relied on
8 Defendants' omissions, misrepresentations and concealment in paying the Distressed Mortgage Fees
9 as described herein that had the effect of misrepresenting and portraying the Distressed Mortgage Fees
10 memorialized in Ocwen Servicing's uniform billing statements as lawful, reasonable and necessary,
11 which they were not. While proof of reliance for the members of the California Distressed Mortgage
12 Fee Subclass is not necessary under the UCL, it may also be presumed or inferred from the very nature
13 of the omissions, concealment, misrepresentations and conduct of the Defendants presented in this
14 action.

15 197. Borrowers, however, are not obligated to pay the amounts Ocwen Servicing specified
16 in its communications concerning inflated and duplicative Distressed Mortgage Fees. Ocwen
17 Servicing disguises the fact that the inflated (including duplicative) Distressed Mortgage Fees they
18 represent as being owed were up-charged through the use of Altisource Servicing and the Altisource
19 Parent's mortgage servicing technology software, and in violation of disclosures required by law and
20 servicing guidelines Ocwen Servicing is required to follow. Contrary to Ocwen Servicing's attempts
21 to collect for the inflated and duplicative Distressed Mortgage Fees charged to borrowers, Ocwen
22 Servicing is not legally authorized to indiscriminately assess and collect inflated or duplicative
23 Distressed Mortgage Fees.

24 198. Under the mortgage servicing rights that Ocwen Servicing acquires, Ocwen Servicing
25 is authorized to assess reasonable and appropriate fees and charges as provided for in the mortgage
26 agreement. Whether or not they are contractually authorized to assess any or all of the fees at issue in
27 this action, they cannot charge or collect fees that are unlawful, unfair or the product of a self-dealing
28 fraudulent conspiracy under federal or state laws.

199. Ocwen Servicing's misrepresentations and concealment of material facts, as set forth above, was misleading or likely to deceive the general public within the meaning of the UCL.

200. Ocwen Financial, Altisource and Erbey conspired with Ocwen Servicing to violate the UCL, and aided and abetted Ocwen Servicing in its violations of the UCL by providing agreeing to assist and assisting Ocwen Servicing in its conduct which violates the UCL, and are jointly and severally liable to Plaintiffs and members of the California Distressed Mortgage Fee Subclass for Ocwen Servicing's violations of the UCL.

201. As a result of the conduct described above, Defendants have been, and will continue to be, unjustly enriched at the expense of Plaintiffs and members of the California Distressed Mortgage Fee Subclass. Specifically, Defendants have been unjustly enriched by the revenue and profits they have obtained from Plaintiffs and the California Distressed Mortgage Fee Subclass.

202. Through their fraudulent acts and practices, Defendants have improperly obtained, and continue to improperly obtain, money from members of the California Distressed Mortgage Fee Subclass. As such, Plaintiffs request that this Court cause Defendants to restore this money to Plaintiffs and the California Distressed Mortgage Fee Subclass, to disgorge the profits Defendants have made on Inflated Distressed Mortgage Fees, and to enjoin Defendants from continuing to violate the Unfair Competition Law or violating it in the same fashion in the future as discussed herein. Otherwise, members of the California Distressed Mortgage Fee Subclass may be irreparably harmed and/or denied an effective and complete remedy if such an Order is not granted.

SEVENTH CAUSE OF ACTION
Fraud (on behalf of Plaintiffs and the National Distressed Mortgage Fees Class and against All Defendants)

203. Plaintiffs hereby incorporate the foregoing paragraphs of this Complaint and restate them as if they were fully written herein.

204. Plaintiffs bring this cause of action on behalf of themselves and the members of the National Distressed Mortgage Fees Class.

205. Plaintiffs and members of the National Distressed Mortgage Fee Class relied on Ocwen Servicing's disclosures through its billing statements and other written communications that uniformly and consistently failed to disclose the Ocwen Enterprise' conspiracy, or that the Ocwen Enterprise up-

1 charged for the inflated (including duplicative) Distressed Mortgage Fees, which Plaintiffs and the
2 National Distressed Mortgage Fee Class reasonably believed were valid lawful charges.

3 206. Plaintiffs relied on Ocwen Servicing's disclosures through its billing statements and
4 other written communications that uniformly and consistently misrepresented that the Distressed
5 Mortgage Services were provided by a disinterested third-party, and that the charges for the Distressed
6 Mortgage Services were negotiated at arms-length, and were not duplicative of other services.

7 207. Had the true nature of the inflated and duplicative Distressed Mortgage Fees been
8 disclosed to Plaintiffs and members of the National Distressed Mortgage Fees Class, they would have
9 been aware of the unfair, unlawful and fraudulent nature of the fees, and Plaintiffs would have disputed
10 the charges and not paid them.

11 208. As a result of Ocwen Servicing's disclosures, misrepresentations, omissions and
12 failures to disclose, Plaintiffs and National Distressed Mortgage Fee Class members have been injured
13 and suffered a loss of money or property. Plaintiffs and members of the National Distressed Mortgage
14 Fee Class would have challenged Ocwen Servicing's attempt to assess the inflated and duplicative
15 Distressed Mortgage Fees on their accounts had it not been for Ocwen Servicing's concealment of
16 material facts.

17 209. Ocwen Servicing omitted and concealed material facts, as discussed above, with
18 knowledge of the effect of concealing of these material facts. Ocwen Servicing knew that by
19 misleading consumers, the fees would generate higher revenue and profits for all members of the
20 Ocwen Enterprise including itself, Ocwen Financial, Erbey and the Altisource Entities.

21 210. Plaintiffs and members of the National Distressed Mortgage Fee Class justifiably relied
22 upon Ocwen Servicing's knowing, affirmative, and active concealment. Class Members' justifiable
23 reliance may also be presumed or inferred from the very nature of the omissions, concealment,
24 misrepresentations and conduct of the Defendants presented in this action. By concealing material
25 information about their scheme to assess inflated and duplicative Distressed Mortgage Fees on
26 borrowers' accounts, Ocwen Servicing intended to induce Plaintiffs and members of the National
27 Distressed Mortgage Fee Class into believing that they owed Ocwen Servicing more money that it was
28 entitled to.

1 211. Ocwen Servicing acted with malice, oppression, or fraud.

2 212. Ocwen Financial, Altisource and Erbey conspired with Ocwen Servicing to commit the
3 frauds described herein, and aided and abetted Ocwen Servicing in its frauds by providing agreeing to
4 assist and assisting Ocwen Servicing in its conduct which constitutes fraud, and are jointly and
5 severally liable to Plaintiffs and members of the National Distressed Mortgage Fees Class for Ocwen
6 Servicing's fraud.

7 213. Under the mortgage servicing rights that Ocwen Servicing acquires, Ocwen Servicing
8 is authorized to assess reasonable and appropriate fees and charges as provided for in the mortgage
9 agreement. Whether or not they are contractually authorized to assess any or all of the fees at issue in
10 this action, they cannot charge or collect fees that are unlawful, unfair or the product of a self-dealing
11 fraudulent conspiracy under federal or state laws.

12 214. As a direct and proximate result of Ocwen Servicing's omissions and active
13 concealment of material facts, Plaintiffs and each member of the National Distressed Mortgage Fee
14 Class has been damaged in an amount to be proved at trial.

15 **IX. PRAYER**

16 WHEREFORE, Plaintiffs, on behalf of themselves and all class members and subclass
17 members, request award and relief as follows:

18 A. An order certifying that this action is properly brought and may be maintained as a
19 class action, that Plaintiffs Victor P. Giotta and Lorelee Giotta be appointed a Class Representatives
20 for the National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass
21 and California Distressed Mortgage Fee Subclass, and that Plaintiffs' counsel be appointed Counsel
22 for the Class and Subclasses.

23 B. Order that Defendants are financially responsible for notifying all members of the
24 National Distressed Mortgage Fee Class, National FDCPA Distressed Mortgage Fee Subclass and
25 California Distressed Mortgage Fee Subclass of the alleged omissions, concealments,
26 misrepresentations, conduct, inflation, duplicative or excessive Distressed Mortgage Services
27 described herein, as well as any finding by the Court with respect thereto.

28

1 C. Awarding compensatory damages in an amount determined at trial for each Cause of
2 Action asserted herein for which these damages are available.

3 D. Awarding restitution in such amount that were paid for inflated and duplicative
4 Distressed Mortgage Fees, or restitutionary disgorgement of the profits Defendants obtained from
5 those transactions for each Cause of Action asserted herein for which this relief is available.

6 E. Awarding treble and punitive damages as provided by law in an amount determined at
7 trial for each Cause of Action asserted herein for which these damages are available.

8 F. Awarding statutory damages as provided by law for each Cause of Action asserted
9 herein for which these damages are available.

10 G. An order enjoining Defendants from continuing the unlawful, unfair and fraudulent
11 practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of
12 their conduct and pay them restitution and disgorgement of all moneys acquired by Defendants by
13 means of any act or practice to be declared by this Court to be wrongful.

14 H. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees
15 and pre and post-judgment interest.

16 I. An order requiring an accounting for, and imposition of, a constructive trust upon, all
17 monies received by Defendants as a result of the unlawful, unfair, and fraudulent conduct alleged
18 herein.

19 J. Such other and further relief as may be available as part of the statutory claims asserted
20 herein, or otherwise as may be deemed necessary or appropriate for any of the claims asserted.

21 K. An order directing Defendants to assign to Plaintiffs and Class Members the right to
22 collect on indemnity agreements signed by any person who is obligated to indemnify Defendants for
23 liability originating from the allegations of this First Amended Complaint.

24 **X. DEMAND FOR JURY TRIAL**

25 Plaintiffs hereby demand a trial by jury on all claims and/or issues so triable.

26 DATED: June 12, 2015

Respectfully Submitted,

27 /s/Joseph N. Kravec, Jr.

28 Joseph N. Kravec, Jr. (admitted *pro hac vice*)

Wyatt A. Lison (admitted *pro hac vice*)
McKean J. Evans (to be admitted *pro hac vice*)

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PROPOSED CLASS AND SUBCLASSES**